United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Background Release

HR/CT/170
19 March 1992

HUMAN RIGHTS COMMITTEE TO HOLD FORTY-FOURTH SESSION

IN NEW YORK, 23 MARCH TO 10 APRIL

Will Examine Reports on Implementation of Civil, Political Rights Covenant By Republic of Korea, Algeria, Niger, Peru, Columbia, Belgium and Yugoslavia

GENEVA, 16 March (UN Information Service) -- The measures taken by Algeria, Niger, Peru, Colombia, Belgium and Yugoslavia to promote and protect civil and political rights will be the primary focus of the forty-fourth session of the Human Rights Committee, to be held in New York from 23 March to 10 April.

The Committee -- composed of 18 human rights experts serving in their personal capacity -- will examine reports from the Governments of those countries on the measures they have adopted to implement the International Covenant on Civil and Political Rights. Governments are also invited to send representatives to present the reports and to answer oral and written questions from Committee members.

According to a tentative timetable, the Committee will take up the reports of Algeria and Niger on Wednesday, 25 March; of Peru on Tuesday, 31 March; of Columbia on Thursday, 2 April; of Belgium on Tuesday, 7 April; and of Yugoslavia on Wednesday, 8 April.

During this session, the first of three scheduled for 1992, the Committee will also study, under the Optional Protocol to the Covenant, communications from individuals claiming to be victims of a violation of any of the rights proclaimed in the Covenant. Forty-five such cases may be acted upon at this session, while 90 others may be considered to determine their admissibility.

In addition, the Committee will discuss a revised general comment on article 10 of the Covenant, which states, among other things that all detained persons shall be treated with humanity and with respect for their inherent dignity. General comments are intended to help States parties implement the rights enshrined in the Covenant.

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Finally, the Committee will consider any further contributions it may wish to make to the preparatory process for the 1992 World Conference on Human Rights.

Background on Covenant

The Covenant was adopted by the General Assembly and opened for signature in 1966, together with the International Covenant on Economic, Social and Cultural Rights, both of which entered into force in 1976.

The Covenant begins by stating that all peoples have the right of self-determination. It guarantees to everyone the right to life, liberty and security of person. It prohibits torture, cruel or degrading treatment or punishment, and the arbitrary deprivation of life. Anyone arrested shall be informed of the reasons for the arrest, and anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other legally authorized person.

The Covenant also provides, among other things, for freedom of movement, and it places limitations upon the expulsion of aliens lawfully in the territory of a State party. In addition, the right to freedom of thought, conscience and religion and to freedom of expression are recognized, and the Covenant provides for the prohibition of any propaganda for war or any advocacy of national, racial or religious hatred.

The following 103 States have ratified or acceded to the Covenant: Afghanistan, Albania, Algeria, Angola, Argentina, Australia, Austria, Barbados, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burundi, Cameroon, Canada, Central African Republic, Chile, Colombia, Congo, Costa Rica, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Dominican Republic, Ecuador, Egypt, Equatorial Guinea, El Salvador, Estonia, Finland, France, Gabon, Gambia, Germany, Grenada, Guinea, Guyana, Haiti, Hungary, Iceland, India, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Lebanon, Libya, Lithuania, Luxembourg, Madagascar, Mali, Malta, Mauritius, Mexico, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Rwanda, Saint Vincent and the Grenadines, San Marino, Senegal, Somalia, Russian Federation, Spain, Sri Lanka, Sudan, Suriname, Sweden, Syria, Togo, Trinidad and Tobago, Tunisia, Ukraine, United Kingdom, United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia and Zimbabwe.

Optional Protocol to Covenant

The Optional Protocol to the Covenant provides for the confidential consideration of communications from individuals who claim to be victims of a violation of any of the rights proclaimed in the Covenant. No communication can be received by the Committee if it concerns a State party to the Covenant that is not also a party to the Optional Protocol.

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The following 61 States are parties to the Optional Protocol: Algeria, Argentina, Australia, Austria, Barbados, Benin, Bolivia, Cameroon, Canada, Central African Republic, Colombia, Congo, Costa Rica, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Equatorial Guinea, Estonia, Finland, France, Gambia, Hungary, Iceland, Ireland, Italy, Jamaica, Libya, Lithuania, Luxembourg, Madagascar, Malta, Mauritius, Mongolia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Saint Vincent and the Grenadines, San Marino, Senegal, Somalia, Russian Federation, Spain, Suriname, Sweden, Togo, Trinidad and Tobago, Ukraine, Uruguay, Venezuela, Zaire and Zambia.

The Committee is also mandated under Article 41 of the Covenant to consider communications from a State party alleging violations of the Covenant's provisions by another State party. This procedure can be applied when both States recognize this competence of the Committee by a relevant declaration. So far, the following 33 States have done so: Algeria, Argentina, Austria, Belgium, Canada, Chile, Congo, Czechoslovakia, Denmark, Ecuador, Finland, Gambia, Germany, Hungary, Iceland, Ireland, Italy, Luxembourg, Malta, Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Republic of Korea, Senegal, Russian Federation, Spain, Sri Lanka, Sweden, United Kingdom and Zimbabwe.

Committee Officers, Membership

The Committee's members are elected by the States parties to the Covenant for a term of four years. According to article 28 of the Covenant, "they shall be persons of high moral character and recognized competence in the field of human rights". The Chairman of the Committee is Fausto Pocar, expert from Italy. Its Vice-Chairmen are Francisco José Aguilar Urbina, expert from Costa Rica; Vojin Dimitrijevic, expert from Yugoslavia and S. Amos Wako, expert from Kenya. The Rapporteur is Nisuke Ando, expert from Japan.

The other members are: Christine Chanet, expert from France; Omran El Shafei, expert from Egypt; János Fodor, expert from Hungary; Kurt Herndl, expert from Austria; Rosalyn Higgins, expert from the United Kingdom; Rajsoomer Lallah, expert from Mauritius; Andreas V. Mavrommatis, expert from Cyprus; Rein A. Müllerson, expert from the Russian Federation; Birame Ndiaye, expert from Senegal; Julio Prado Vallejo, expert from Ecuador; Waleed Sadi, expert from Jordan; Alejandro Serrano Caldera, expert from Nicaragua and Bertil Wennergren, expert from Sweden.

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Press Release

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Human Rights Committee
Forty-first Session
1121st Meeting (AM)

HR/CT/171
23 March 1992

HUMAN RIGHTS COMMITTEE DECIDES TO CONSIDER REPORTS OF ALGERIA, PERU, COLOMBIA, BELGIUM, YUGOSLAVIA ON COMPLIANCE ON CIVIL AND POLITICAL RIGHTS COVENANT

The Human Rights Committee this morning decided to consider at its present session the reports of Algeria, Peru, Colombia, Belgium and Yugoslavia on their compliance with the International Covenant on Civil and Political Rights.

The Committee took that action by adopting its agenda and programme of work, as orally revised. The agenda will also include consideration of confidential communications from individuals claiming that any of their rights under the Covenant have been violated and who have exhausted all domestic legal remedies. In addition, the Committee will consider action by the General Assembly on activities relating to human rights and the World Conference on Human Rights (1993).

Francisco Jose Aguilar Urbina, expert from Costa Rica and Chairman of the Committee's Working Group on article 40 of the International Covenant on Civil and Political rights, introduced its report, which recommended that the Committee, as a whole, should adopt written concluding observations on State reports, including individual members' observations, to be conveyed to the States parties concerned as soon as convenient. Article 40 concerns the reporting obligations of States parties. During the debate, members expressed concern over the practicality of a timetable for drafting such observations.

Also this morning, an opening statement was made by a representative of the Centre for Human Rights. He said that with the accession to the Covenant of Angola, Brazil, Estonia and Lithuania, the total number of States parties had reached 102. He noted that both Italy and Austria had offered to host the World Conference on Human Rights.

The Committee Chairman, Fausto Pocar, expert from Italy, announced that consideration of the initial reports of the Republic of Korea and of Niger had been postponed, and that S. Amos Wako, expert from Kenya, had resigned as Vice-Chairman. A new Vice-Chairman would be elected later during the session.

The 18-member Committee, a body of experts serving in their private capacity, is charged with monitoring the implementation of the rights recognized in the Covenant and on progress made in the enjoyment of those rights.

When the Committee meets again at 3 p.m. today, it will begin its consideration of general comments on the Covenant, which are intended to help States parties implement the rights enshrined in the Covenant.

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For information media--not an official record

Committee Work Programme

The Human Rights Committee met this morning to begin the work of its 1992 session. It is scheduled to adopt its agenda, take up organizational matters and consider action taken by the General Assembly at its 1991 session.

Statement by Centre for Human Rights

ENAYAT HOUSHMAND, Director of the Implementation Branch of the Centre for Human Rights, said the Secretary-General had initiated a restructuring and streamlining of the Organization. A number of offices and departments had been discontinued as separate entities but the Centre remained unaltered, except for a change in its directorship.

Regarding the current status of the International Covenant on Civil and Political Rights, he said that with the accession of Angola, Brazil, Estonia and Lithuania, the total number of States parties had reached 102. In addition, Angola, Estonia, Lithuania and Poland had acceded to the Optional Protocol, bringing the total number of States parties to that instrument to 61.

It had been suggested during the last session of the General Assembly, he continued, that the Commission on Human Rights should examine closely the question of establishing an emergency mechanism enabling the United Nations to react immediately to acute situations arising from gross violations of rights and to intervene more quickly where lives were threatened. Delegations had also proposed that representatives from the human rights treaty bodies could be sent on fact-finding missions to States parties whenever a serious and urgent situation appeared to justify such action.

At its most recent session, he said, the Commission had approved a resolution urging Governments to refrain from all acts of intimidation and reprisal against individuals and groups seeking to cooperate with United Nations representatives and to provide testimony or information. It had also approved, by consensus, the text of the draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities.

He stated that the second session of the Preparatory Committee of the World Conference on Human Rights (1993) would be held in Geneva from 30 March to 10 April. Regional meetings were being organized this year in San José (July), Bangkok (August) and Tunis (November). They were expected to focus on how to enhance the implementation of human rights norms and instruments at the international, regional and national levels. Italy and Austria had both offered to host the World Conference; Venice or Vienna were proffered as possibilities.

Methods of Work

FRANCISCO JOSE AGUILAR URBINA, expert from Costa Rica and Chairman of the Working Group on article 40 of the Covenant, which concerns the reporting obligations of States parties, introduced the group's recommendations on the Committee's work methods relating to that article.

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Three options were envisaged in the recommendations, he said. The first was to redraft the Committee's annual report so that instead of the paragraphs giving the conclusion of members of the Committee on a State party report, the views of the Committee itself should be presented. The second option was to draft a text setting out the Committee's conclusions, following its consideration of a report for adoption at its subsequent session. The third option was to prepare such a text for adoption at the same session of the Committee.

He said the Working Group recommended that the Committee, as a whole, should adopt written concluding observations on State reports. Such observations should be conveyed to the States parties concerned as soon as convenient and should also be included in the Committee's annual report to the General Assembly.

Members, he said, should continue making individual observations when consideration of State party reports was completed. The Committee should designate one of its members for each State report to prepare draft concluding observations which should be based on consideration of the report as a whole and individual members' observations.

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Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-first Session
1122nd Meeting (PM)

HR/CT/172
23 March 1992

HUMAN RIGHTS COMMITTEE DEBATES TEXT OF GENERAL COMMENT ON ARTICLE 10 OF COVENANT ON CIVIL AND POLITICAL RIGHTS

The Human Rights Committee of experts this afternoon debated the text of a general comment on article 10 of the International Covenant on Civil and Political Rights, and disagred on language dealing with the conditions under which persons "deprived of their liberty" were detained. Committee members also sought to clarify provisions concerned with the minimum rules of detention to be applied by States parties.

(Article 10 states that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". It calls for the segregation of convicted persons from accused persons; for the separation of accused juvenile persons from adults; and for the reformation and social rehabilitation of prisoners to be the principal aim of the penitentiary system.)

In the general comment, the Committee states its request for detailed information on the penitentiary system of States parties; on measures taken to provide education and vocational guidance to prisoners; on the disciplinary system; and on the treatment of juvenile offenders. It affirms that every person under the age of 18 should be treated as a juvenile offender.

General comments are submitted to the States parties concerned to help them implement the rights enshrined in the Covenant.

The expert from France introduced the draft general comment, which had initially been considered by the Committee at its session in July 1991. Statements were also made by the experts from Sweden, Ecuador, Yugoslavia, Egypt, Cyprus, Japan, Austria and Senegal.

Also this afternoon, the Committee elected Omran El Shafei, expert from Egypt, as Vice-Chairman.

When it meets next at 10:30 a.m. tomorrow, 24 March, the Committee will continue consideration of its methods of work and also examine a list of issues relating to the reports of States parties to be taken up at the current session.

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For information media—not an official record

United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-first Session
1123rd Meeting (AM)

HR/CT/173
24 March 1992

HUMAN RIGHTS COMMITTEE APPROVES LIST OF ISSUES FOR ITS CONSIDERATION WHEN REVIEWING REPORTS OF PERU, COLOMBIA, BELGIUM

The Human Rights Committee this morning decided to ask Peru if there were special courts or tribunals in the country and what the situation of indigenous peoples was in areas of drug production and marketing.

It took that action by approving, as orally revised, a list of issues to be considered by the Committee during its examination of Peru's report on compliance with the International Covenant on Civil and Political Rights. Regarding Colombia, the Committee decided to ask for information on whether judges presiding at drug trafficking trials exercised their functions anonymously.

The list of issues for Belgium was adopted as well, as orally revised.

Also this morning, as the Committee continued consideration of its methods of work, it reached initial consensus on the test format suggested by one of its working groups for a procedure to make concluding observations on State party reports. The format to be used by an appointed rapporteur for each such report would include a general evaluation, positive developments, factors and difficulties affecting implementation, issues of particular concern and, finally, specific recommendations of the Committee.

The Committee, in pursuing its debate on general comments on article 10 of the Covenant, discussed the wording of a provision calling for penitentiary establishments to be supervised by non-governmental bodies, such as bar associations, doctors, social workers and ombudsmen. Members disagreed as to whether the impartiality or independence of such bodies was more important, but finally settled on the latter.

When it meets again at 3 p.m. today, the Committee will pursue its consideration of general comments on the Covenant.

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For information media—not an official record

United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-first Session
1124th Meeting (PM)

HR/CT/174
24 March 1992

HUMAN RIGHTS COMMITTEE CONCLUDES REVISION OF GENERAL COMMENT ON ARTICLE 10 OF INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The Human Rights Committee this afternoon concluded revision of a general comment on article 10 -- which concerns treatment of persons deprived of liberty -- of the International Covenant on Civil and Political Rights, as orally revised.

Most of the revisions of the general comment concerned State responsibility for torture equipment found in places of detention, the treatment of accused juvenile persons and offenders, the exclusion from society of recidivists and the purpose of penitentiary systems. General comments are submitted to the States parties concerned to help them implement the rights enshrined in the Covenant.

(Article 10 states that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". It calls for the segregation of convicted persons from accused persons; for the separation of accused juvenile persons from adults; and for the reformation and social rehabilitation of prisoners to be the principal aim of the penitentiary system.)

The Committee will examine the revised text of the comment on article 10, as well as the text on article 7 which relates to torture, on Wednesday, 1 April.

When it meets again at 10 a.m. tomorrow, 25 March, the Committee will take the initial report of Algeria.

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For information media—not an official record

United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-fourth Session
1125th Meeting (AM)

HR/CT/175
25 March 1992

HUMAN RIGHTS COMMITTEE TAKES UP ALGERIA'S FIRST REPORT ON ITS COMPLIANCE WITH COVENANT ON CIVIL AND POLITICAL RIGHTS

Experts Raise Questions On Political Situation Since Cancellation of Elections

The political situation in Algeria since the cancellation of elections last January was the subject of questions by members of the Human Rights Committee this morning as they began consideration of that country's initial report on its compliance with the International Covenant on Civil and Political Rights.

Members asked for an update on the report in the light of recent events, including the state of emergency imposed last February. They questioned the fact that an Islamic political movement was considered a threat to a democracy in which Islam was the State religion.

The independence of the judiciary, the imposition of the death sentence for economic crimes, as well as military tribunals, internment camps and the treatment of ethnic and religious minorities were also stressed by the Committee's experts. One expert stated that the party in power had abused the democratic process in order to try to gain the reins of power. Another asked how the Government reconciled its statement of equality of the sexes with Algeria's traditionalist, patriarchal culture and traditional Muslim social norms, such as dowries and polygamy.

Statements were made by the experts from Egypt, Jordan, Cyprus, Sweden, France, Yugoslavia, Senegal, Ecuador, Japan, Russian Federation and Hungary.

When it meets again at 3 p.m. tomorrow, 26 March, the Committee will examine the list of issues to be discussed regarding Yugoslavia. The representatives of Algeria will respond to the questions asked this morning on Friday, 27 March.

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For information media—not an official record

Committee Work Programme

The Human Rights Committee met this morning to consider Algeria's initial report on its implementation of the International Covenant on Civil and Political Rights.

Report of Algeria

The initial report of Algeria (document CCPR/C/62/Add.1) states that the reforms undertaken in the 1980s concerning the country's economic, social and political life had led to the approval by popular referendum of a Constitution on 23 February 1989. A Presidential decree had ratified the International Covenant on Civil and Political Rights on 16 May 1989. The report goes on to examine in detail the articles of the new Constitution and to illustrate how each fulfilled the terms of the relevant articles in the Covenant.

The Algerian State, as defined in the new Constitution, had drawn its strength from "the affirmation of rules which lay the foundations for a multi-party system" and for the separation of powers, which had given a special place to citizens' participation in the conduct of public affairs and safeguarded and promoted their freedoms.

The Constitution of 1989, the report continues, had specified the primacy of law; political pluralism; freedom of association; and the separation of executive, legislative and judicial powers. It had widened the scope of human rights and freedoms which, under the previous Constitution, had been relegated to the restrictive area of law. The rights recognized by the 1976 Constitution had been reaffirmed, strengthened and safeguarded by new constitutional provisions.

The Constitution, according to the report, also states that it "is the fundamental law that guarantees individual and collective rights and freedoms, protects the rule of the people's free choice". Legal restrictions on constitutional rights would only be permitted in rare and exceptional cases. Any contrary legislative or regulatory text would be declared unconstitutional. The rights and freedoms listed had declared all citizens to be equal before the law with no discrimination on grounds of birth, race, sex, opinion or other personal or social condition or circumstance. Institutions, it states, should seek to ensure the equality of rights and duties of all male and female citizens.

The Constitution also had affirmed Islam as the State religion and Arabic as the national and official language. The Algerian people, by referendum, had inserted into the Constitution the basic features of their character, stressing the homogeneity of their human and cultural makeup. The affirmation should not be interpreted as a narrow, restrictive view of the Algerian character. Freedom of religion and worship were covered by several articles of the Constitution.

The report states that the basis of all human rights -- the right to life -- had been enshrined in the Constitution. Although the death penalty was the

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maximum sentence laid down in the Algerian Penal Code, it had only been carried out in exceptional circumstances. It was intended as a deterrent. Cases where it had been carried out had involved crimes of violence committed under aggravated circumstances, in particular crimes against children. A commission within the Ministry of Justice responsible for revising the Penal Code had begun consideration of the question of the death penalty.

The report indicates that the institutional controls of the country had been strengthened through the establishment of a Constitutional Council, responsible for monitoring compliance with the Constitution and checking legislative and presidential elections.

Procedures for emergencies had been reviewed, the report goes on, resulting in the abolition of the State Security Court and the referral of pending proceedings to the courts of normal jurisdiction. The Code of Penal Procedure had been revised so that any crime would be subject to the procedures and jurisdictions of ordinary law. The economic section of the criminal court had been abolished. The provisions of the Code of Penal Procedure had also been revised to afford better protection of the fundamental rights and freedoms of the citizen, in particular by strengthening the rights of the defence and the safeguards for procedures of police custody and pre-trial detention.

The revision of judiciary regulations had also given full effect to the establishment of a multi-party system, the separation of powers and the independence of the judiciary. New judiciary regulations strengthened the new function of the judge, ensured the judge's impartiality and protected him against any form of interference or pressure.

A re-examination of the content of legislation to rid Algeria of rules of law inherited from colonial times was also continuing. In that context, the penalty of transportation had been abolished. A series of acts had also been promulgated to organize the free exercise of fundamental constitutional rights, including the right to organize and the rights of political and non-political associations.

The Constitution also states that no political association could be put forward based on sectarian and regionalistic practices, feudalism and nepotism or behaviour contrary to Islamic morals and the values of the Revolution of 1 November 1954. At the beginning of December 1990, there were 33 approved political parties and 28,500 non-political associations. The process of revising the laws was continuing in order to adapt them to the new aspirations of Algerian society.

A document of notification submitted by Algeria under article 4 of the Covenant states that the authorities had taken measures to strengthen the rule of law and consolidate democratic institutions. Measures attempting to translate constitutional principles into law had included the organization of multi-party elections. Scheduled for 27 June 1991, those elections had to be postponed because of breaches of the public order which seriously endangered the institutions of the country.

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A state of emergency was decreed on 5 June 1991 for a duration of four months to deal with an insurrectionary situation which had threatened the stability of the institutions and public order, the security of persons and property and the functioning of public services. The state of emergency had been lifted on 29 September 1991. The proclamation of the state of emergency had complied with the provisions of the International Covenant and of the Constitution. The Constitution had not been suspended, nor had the People's National Assembly been dissolved.

Four executive decrees had dealt with the exceptional measures during the state of emergency and how those measures might derogate from specific provisions of the Covenant, together with remedies to which anyone affected by those measures might have had recourse.

Algeria's Report Introduced

NOUREDDINE BENAMARA, Director of Research of the Ministry for Justice of Algeria, introducing his country's report, said that explained and justified the evolution of Algeria's legislation in its defence of human rights. The Constitution of 23 February 1989 was historic for his country, having initiated a structural reform of the main institutions of the State. That reform had continued with the establishment of the Human Rights Ministry. The National Human Rights Observation Body was also established to spread awareness of human rights in the country.

The dichotomy of the rapid evolution of law and the subsequent changes in society had resulted in a series of crisis situations in Algeria, he said. That had forced the authorities to reinforce the rule of law and balance the needs of society with the changes in the legal structure of the State.

Questions by Experts

OMRAN EL SHAFEI, expert from Egypt, said that despite circumstances in Algeria, Government officials had been able to prepare the report in record time and under difficult conditions. He asked for further information on the period since publication of the report.

The report was objective and comprehensive, he continued. However, it did not deal with the difficulties faced by Algeria in its process of democratization, with the authorities' efforts to disseminate knowledge of the rights and duties regulated by the Covenant, or with the legal status of the Covenant and whether it was a part of national legislation. Were there any examples in which courts had invoked an article of the Covenant? he asked.

The report was none the less a laudable effort, he said. Such developments as the establishment of a ministry for human rights, the enactment of a new Constitution and the establishment of a multi-party system showed that Algeria was a pioneer of sincere attempts to increase guarantees for the exercise of rights and liberties.

The transition from one political system to another, open and democratic system, he went on, had been marred by violence and a reaction to that

violence. Certain breaches had occurred, and instead of the rule of law prevailing, the law was being used to justify such breaches through the imposition of the state of emergency. There were cases of long periods of detention without trial, resort to military courts, cases of torture and the misuse of arms by security forces. Was all that consistent with Algeria's commitment to the provisions of the Covenant? he asked.

WALEED SADI, expert from Jordan, said he hoped the dialogue would lead to a greater understanding of the recent events in Algeria. The achievements of Algeria in signing a number of international instruments had served as a model for other developing countries.

He went on to say that the report dealt only with the history leading up to events of recent months. Without reference to the recent events, the report belonged to another era. It did not apply to the current situation in Algeria. The questioning on such a report would not relate to the actual events taking place in the country.

At the beginning of the year, the democratic process in Algeria was suspended, and the results of the election were cancelled, he said. The current actions of the Government now had to be reconciled with the Covenant. He questioned whether any article of the Covenant could serve as a basis for the actions of the Government. The suspension of the democratic process must be based on a particular article.

He also wanted to know whether the United Nations had been notified of the state of emergency, the grounds to justify the emergency and the projected length of the emergency.

ANDREAS V. MAVROMATTIS, expert from Cyprus, said Algeria, which had helped considerably in the self-determination of peoples, had belatedly taken the right step in acceding both to the Covenant and to its Optional Protocol. The report was very good indeed, containing a wealth of information on the steps taken towards democracy and pluralism. It was unfortunate that it ended on 7 June 1991, about the time that the first state of emergency had been declared.

He asked for further information in connection with the two states of emergency: that of June 1991, of which notification had been given to the Secretary-General, including its termination last October, and that of February 1992. Given that the Constitution had been drafted so soon before Algeria's accession to the Covenant, why had the Covenant and such clauses as those on discrimination, not been used as a model or incorporated into the Constitution? he asked. The Covenant should take precedence over national legislation.

Information was also needed on the complete independence of members of the judiciary, he went on, including their protection from criminal and civil process. Did the six-year term of justices protect their independence? he asked. What was the justification for declaring a state of emergency? The party in power had abused the process to try to gain the reins of power and

demolish what had been achieved by way of democratization. Which articles of the Covenant, if any, had been derogated from during the two states of emergency? Did that have any effect on the exercise of the right to send a communication under the Optional Protocol, either de facto or de jure?

He asked which crimes carried the death sentence, saying that economic offences were not serious enough to merit that penalty, although in Algeria there seemed to be a way to impose civil imprisonment for debt. Infant mortality rates should be provided. The report stated that Algerians were characterized by homogeneity, but it also indicated there were ethnic and religious minorities in the country. What were the provisions for their protection? he asked.

BERTIL WENNERGREN, expert from Sweden, said the report was comprehensive and informative. Although it was comprehensive, it did not mention the difficulties of applying the Covenant or the restrictions placed upon citizens in conjunction with the rights described in the Constitution.

The description of freedom of expression was an example of an incomplete picture, he said. The Constitution stated that freedom of expression was guaranteed, but that freedom was not specifically delineated.

The rights and freedoms of the citizens were mentioned at length, he said, but the limitations and restrictions on those freedoms were not. He questioned whether the article in the Constitution dealing with rights and freedoms was binding on the laws of the land, or merely a declaration. The relationship with ordinary laws needed to be explained. It was necessary to know, for example, whether an ordinary law could take precedence over an article of the Constitution.

Penalties for criticism of the laws of Islam were mentioned in the report, he observed, adding that that limitation on the freedom of expression needed to be justified in terms of the Covenant.

CHRISTINE CHANET, expert from France, asked for an update on the part of the report concerning the general legal and juridical framework and the constitutional process, especially since the resignation of the President. How, she asked, did Algeria explain the fact that the elections had been halted, particularly with respect to article 25 of the Covenant, concerning the right to vote?

She wondered if the National Assembly had exercised its right to meet during the June 1991 state of emergency, and what the present situation was. Had not the Assembly been suspended on 21 February? she asked. Was the one-year proclaimed duration of the state of emergency compatible with article 4 of the Covenant, according to which states of emergency should be proclaimed only if the situation so required, with a time-limit set in advance, where possible?

She also asked what recourses were provided under domestic law concerning application of the Covenant, and requested clarification of the statement in

the report that judges would be protected against any form of pressure. The best way to protect the judiciary was its status, so she did not understand the reason for that provision. Why, she asked, should 10 years of active service by a judge be needed before he or she became irremovable? Justice should be guaranteed in any case.

The competence of military tribunals to judge civilians had been restored under the state of emergency, she continued. What was the procedure followed in that regard? Those tribunals had the option of passing the death sentence, which they had done on 3 March. How many executions had occurred over the past year? she asked. How was the Presidential pardon exercised?

She asked what the cases were in which persons were placed in internment camps and how many persons were presently subject to such measures. Information should also be provided on restrictions on public demonstrations and freedom of the press. There was at least one less political party now than in December 1990. How was the prohibition of the Islamic Salvation Front reconciled with the Covenant's article 25? Did Algeria intend to derogate from that article in the context of the state of emergency?

VOJIN DIMITRIJEVIC, expert from Yugoslavia, said the report only covered the period preceding the two emergency situations in Algeria. It did not dwell on difficulties in implementing the Covenant; all Governments had faced difficulties in such implementation. The lack of such information was a problem. The two states of emergency were indications of serious problems in the implementation of the Covenant.

The problem encountered by Algeria in the recent state of emergency, he said, seemed to involve how to create a democratic society that could deal with parties whose very existence would be a threat to that very democracy. Article 5, on the right of groups, States or persons to commit acts aimed at destruction of any rights guaranteed in the Covenant, would seem to apply to that situation. Was that the issue in the declaration of the state of emergency? What were the rights limited and derogated in the emergency; what was its initial purpose and how successful was it?

What were the effective measures to carry out article 7, which concerned torture and degrading punishment? What legal basis prevented those practices? Reportedly, indications were that enforcement had not been rigorous.

He asked about the competence of the militarly courts, that is, their normal competence and their powers under the state of emergency. The question of legal aid was also relevant. The report stated that legal aid was available to people who had committed crimes requiring imprisonment of over five years. Was it possible to obtain free legal aid for crimes amounting to less than five years punishment?

Concerning freedom of thought, function and religion, the Constitution indicated, he said, that Islam was privileged as a State religion, and that other monotheist religions (Christianity and Judaism) were protected. But

blasphemy existed if the person had offended against Islam and the other religions. That suggested that still other religions were not protected; and what of other new religions like Baha'ism? Also, would atheism be protected?

Were the provisions establishing the multi-party system and the freedom of association consistent in the Constitution? he asked. It stated that all such groups were supposed to protect the national economy; what sort of limitation did that place on their activities? They also could not engage in programmes contrary to Islamic morals or to the revolution of 1 November 1954. Shouldn't those rules be defined? The Constitution also stated that a party could not limit its membership to Islamic members only or to members who were opposed to Islam. The dissolution of such an organization could only be done by judicial decision. Which parties were now being dissolved under that law during the state of emergency? he asked.

BIRAME NDIAYE, expert from Senegal, said the Algerian Constitution was an attempt to reconcile contradictory aspirations in Algeria. Islam was the religion of the State, and the Constitution forbade certain practices prohibited by Islam.

The fact that the second ballot had not been held in the recent elections raised questions, he said. Were there any other democratic means for reintroducing the democratic process, once it had been halted? he asked. The mechanisms provided for filling the vacancy in the Presidency in the case of resignation had not been implemented; they called for the President of the Council to assume that position. Had those powers been suspended because of the political situation?

When the Constitution referred to Islam in terms of morals and as a State religion, he said, that was because the overwhelming majority of Algerians were Muslims and found their identity through Islamic standards. But how could a Front, which called itself an Islamic one, at the same time be a threat to a democracy which was based on a broad acceptance of that religion? he asked. That would be more understandable if the political movement, which was the reason behind the Government's blocking the political process, were inspired by a religion other than that guaranteed by the Constitution.

JULIO PRADO VALLEJO, expert from Ecuador, said the report was strong in the judicial and legal areas. How the laws were applied was also important. The actual practice of laws often created failures in the human rights field.

He said human rights violations had occurred during the states of emergency in Algeria. Various people had been detained. They had not been properly brought to trial or given proper medical attention. The Committee had information on such points. The law in Algeria established legal assistance for detainees, but in some cases detained persons had no representation or did not have a lawyer of their choice.

The military courts created possibilities for misinterpretation of the law by the two military officials assigned to each court, he continued. Tribunals composed of persons who were not attorneys were a serious threat to

the rights of the detainees. Threats and incidents of torture had been reported. No public investigations were undertaken to discover the truth of those allegations.

Deaths had occurred in the streets, he said. Were the persons responsible for those violent acts brought to justice? he asked. Twenty-five such deaths had occurred in 1991. What control had been implemented by the authorities over the use of firearms?

The constitutional precepts covered in the report were satisfactory, he said. He asked, however, what were the legal conditions on voting and standing for election. What about the right to strike or the restriction on the right to strike relating to national security? The concept of security would appear to be in conflict with the basic rights and freedoms. He asked for greater specificity in that area.

He said of the references to the death penalty that the Covenant indicated that it could only be applied in the most serious offences. Algerian law included other offences "associated" with serious offences, he said, and asked what specifically were those.

He said the Constitution stated that Islam was the official religion. The other religions enjoyed the protection of the Ministry of Religious Affairs. Did that mean they did not enjoy the protection of the law? The report stated that those who offended Islam were subject to law. It cited insult by "sounds", and he wondered how was that consistent with insult by "writing". A clearer delineation of such offences was necessary.

Concerning the practice of a dowry for a woman in marriage, he asked whether that did not create a situation of sex discrimination. Polygamy was legal for Algerian men; did that also apply to women?

He asked whether the Covenant had been published and distributed in Algeria, and what measures had been taken in terms of its publicity.

NISUKE ANDO, expert from Japan, said there were some discrepancies between the grounds on which discrimination was prohibited by the Algerian Constitution and those enumerated in the Covenant. He asked whether any treaties to which Algeria had been a party prior to the promulgation of the Constitution were now considered unconstitutional and had to be abrogated.

Regarding equality of the sexes, he wondered whether the children of aliens who married Algerians were given Algerian nationality. Were there certain differences of treatment accorded to aliens, relating to access to the courts, status in judicial proceedings and freedom of expression? he asked. Were the activities of foreign correspondents on an equal footing with those of the national media?

He also asked if Islam was granted any privileges over other religions practised in the country, privileges such as financial subsidies and convenience in places of worship. If religious education was part of the

compulsory school system, was a special place given to the Islamic religion? Clarification was needed on the limits of the exercise of the right to information mentioned in the report.

The Government, he went on, should indicate whether there were any cases where the creation of associations had been rejected or where trade unions had not been granted a certificate of registration. Was the Berber language recognized for use in lawsuits, or did the Berbers need interpreters? he asked.

REIN AVOVICH MULLERSON, expert from the Russian Federation, said he was satisfied that Algeria had chosen to present its report during the current difficult times instead of asking for a postponement.

He said he wanted to know more about the current situation. How could the cancellation of elections be justified? The use of democratic processes to "demolish" democracy was of great concern and needed to be examined carefully.

The Committee had received notification of the previous state of emergency in Algeria but not for the current one, he observed. Did either state of emergency involve the Constitutional Council, as stated in the Constitution? Would that body reconcile the state of emergency with the applicable international law and treaties. He asked which body would make restitution on errors by the State, as stipulated in the Constitution.

He referred to the section of the Algerian Constitution concerning rights described under article 25 of the Covenant dealing with voting and elections. The Constitution stated that all citizens over the age of 18 who were in possession of their civil and political rights were eligible to vote. To whom was the Constitution referring when it said "those in possession of their civil and political rights"? There was also reference to the denial of voting rights to those who acted against the interests of the national liberation revolution of 1954. To whom did that refer? What courts had decided such issues?

JANOS FODOR, expert from Hungary, said the report contained very few references to practice, statistics, relevant court decisions and the country's difficulties in implementing the Covenant. Had a body been set up to review the compatibility of old laws with the Covenant, or was it left to judicial practice to decide on a case-by-case basis? he asked. If such decisions were within the competence of the Constitutional Council, why could only certain officials bring cases before the Council? Was the electoral law ever brought before the Council for examination of its constitutionality?

He also wondered why only Algerians could cite provisions of the Covenant in court. As to Algeria's stated solidarity with peoples fighting against all forms of occupation, domination and racial discrimination, in the light of the General Assembly's repeal of the declaration on zionism as racism, did the Government still uphold its statement on that matter?

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The Government should explain, he continued, how it reconciled its statement of equality of the sexes with Algeria's traditionalist, patriarchical culture and traditional Muslim social norms. Knowing what proportion of the total work force was women would provide a better picture of the country's achievements in that regard.

Similarly, he asked if women had the right to acquire goods during marriage, and what law was applicable to the acquisition of goods by women outside the marriage? Did unmarried women remain under the legal guardianship of their fathers?

What steps had been taken to curb the excessive use of force by police, which had led to many deaths? he said. He asked also for the Government to indicate on what grounds applications for creating political parties could be rejected, and what its future plans were for elections.

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United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-fourth Session
1127th Meeting (PM)

HR/CT/176
26 March 1992

HUMAN RIGHTS COMMITTEE TO QUERY YUGOSLAVIA ON HOW CURRENT CRISIS AFFECTS ITS OBLIGATIONS TO RESPECT RIGHTS RECOGNIZED IN COVENANT

The Human Rights Committee this afternoon decided to ask Yugoslavia how the current crisis there had affected its international obligations to respect the rights recognized in the International Covenant on Civil and Political Rights and ensure that those rights were vouchsafed to "all individuals subject to its jurisdiction".

A list of issues, as orally revised, was approved by the Committee for its examination of Yugoslavia's third periodic report on its compliance with the Covenant.

The Committee will ask for a specific description of the "flagrant violations of basic human rights" that had occurred during the recent military operations, as mentioned in the report. It will further inquire as to what steps had already been or would be taken to investigate the violations, punish the culprits and avoid the recurrence of such acts.

The Committee will meet again at 10 a.m. tomorrow, 27 March, to continue its consideration of Algeria's report.

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For information media—not an official record

United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-fourth Session
1128th Meeting (AM)

HR/CT/177
27 March 1992

HUMAN RIGHTS COMMITTEE CONTINUES EXAMINING ALGERIA'S REPORT

Algeria Replies to Questions on Political Arrests, Religious Freedom, State of Emergency, Status of Women and Minorities

Restrictions on political associations, and the existence of Islam as a State religion in Algeria, were not incompatible with the International Covenant on Civil and Political Rights, a representative of Algeria told the Human Rights Committee this morning as it continued its consideration of that country's report.

Algeria's Director of Research at the Ministry of Justice said that restrictions on the rights of associations whose values were contrary to those of Islam did not run counter to the provisions of the Covenant. Arrests involving political parties were made for activities inciting intolerance, fanaticism, racism or recourse to violence. Responding to questions asked earlier by the Committee, he discussed the application of law during the current state of emergency and the status of women and minorities.

In further questioning, several experts criticized the lack of specific information on human rights violations. Particular reference was made to the Government's failure to investigate reports of the use of torture and the indiscriminate use of firearms by authorities against peaceful demonstrators. Concern was also expressed about whether the military courts were able to ensure the rights of the accused and about the independence of the judiciary in general.

Experts also questioned the difficulty of reconciling the guarantee of the people's right to choose a Government and the perceived threat posed by the Islamic Salvation Front to the democratic process.

Statements were made by the experts from Jordan, Hungary, Ecuador, Japan, France, Sweden, the Russian Federation, Yugoslavia and Egypt. The expert from Italy spoke in his capacity as Committee Chairman.

The Committee, which monitors States parties' compliance with the International Covenant on Civil and Political Rights, consists of 18 experts who serve in their individual capacity.

When it meets again at 3 p.m. today, the Committee will hear further replies from the representative of Algeria on that country's initial report.

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For information media--not an official record

Committee Work Programme

The Human Rights Committee met this morning to continue its consideration of the report of Algeria on its compliance with the International Covenant on Civil and Political Rights. (For background, see Press Release HR/CT/175 of 26 March.)

Reply by Algeria

NOUREDDINE BENAMARA, Director of Research at the Ministry of Justice of Algeria, replied to questions posed earlier by members of the Committee. He said the state of siege in his country had been proclaimed by decree in June 1991 and was to have lasted four months; it had been lifted in September 1991, before the four months had elapsed. The state of siege was compatible with articles of the Covenant. At that time about 1,000 people had been interned, and more than 55 members of the police had died.

He said the state of emergency had been proclaimed in February 1992, for one year, and had resulted in the creation of six security centres, where 8,800 detainees were kept; there were no women or minors. Families had been able to communicate with their detained relatives; all humanitarian organizations wishing to visit the centres had been invited to do so, including the Centre for Human Rights, Amnesty International, the International Committee of the Red Cross (ICRC) and the Commission on Human Rights.

As to military tribunals, he said they consisted of military judges with legal training, and during states of emergency they were authorized to hear cases involving violations of state security. Persons brought to trial had the right to call a lawyer. Arrests involving political parties were made on the basis of violations of the law covering political associations, which incriminated all individuals belonging to a party who in their activities incited intolerance, fanaticism, racism or recourse to violence.

He said the dissolution of the National Assembly and the resignation of the President last January had created an unforeseen situation. The Constitutional Council had declared that it was up to the Constitutional powers -- the army, the Head of Government and the Supreme Court -- to ensure the continuity of the State.

Restrictions on the rights of political associations whose values were contrary to those of Islam did not run counter to the provisions of the Covenant, he went on. Associations whose objectives were to incite violence could be suspended or dissolved. Acts of torture were forbidden by the penal code. Certain crimes against individuals, such as murders and castration involving death, were punishable by the death penalty, as were crimes against the safety of the State (treason and espionage) and attacks against the national economy. Many such sentences had been commuted to life sentences, and there had been no death penalty imposed for economic crimes.

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He said five death penalties had been pronounced in the past year, all for cases of murder. Provisions for compensation for material and moral damage owing to judicial error, such as illegal detention, had been made a part of Algerian law in 1986.

Regarding equality between the sexes, he said education and professional training had enabled women to become part of the labour force. Their numbers had risen from 94,514 in 1966 to 305,000 in 1987. That was not a huge proportion in a population of 4,405,000, but Government actions would prove progressively fruitful. The family code recognized the separation of property, and marriage emancipated women -- prior to marriage, their fathers were responsible for their property, but after marriage, they could be responsible.

As to dowries, he went on, it was not up to the woman to bring the dowry, but the man who provided it for his wife. The Koran had dissuaded the practice of polygamy, and the family code had imposed draconian measures to avoid it. In practice, it was an institution that seemed to be disappearing.

He stated that in accordance with the law, there could be no crimes against the image of Islam. That provision did not contradict the Covenant, which stipulated that the exercise of the freedom of expression carried with it special responsibilities and could be subject to restrictions. Under Algerian law, those restrictions included whether exercise of the freedom offended any Head of State or foreign or diplomatic mission.

A child born in Algeria of an Algerian woman and a foreign man could reject Algerian citizenship one year before coming of age, he continued. Berber culture was a component of the Algerian personality and did not constitute an ethnic or linguistic minority, hence the homogeneity of the Algerian people. Actions were undertaken to propagate the Berber culture among all Algerians, and Berbers were entitled to have interpreters in court.

He stated that all religions in Algeria were protected under the Constitution. Nor were Islam and freedom of conscience incompatible, because the State was a republic and did not impose Islam on individuals. Other communities, such as the Jewish and Christian ones, existed within the Algerian community, and public authorities granted subsidies and aid to religious institutions with no discrimination whatsoever.

The Constitutional Council, he went on, examined the constitutionality of laws, including the electoral law. It had had to annul one provision of that law dealing with the votes of women, because it had allowed men to vote instead of their spouses, upon presentation of their marriage certificate.

As to why Algeria had not taken the Covenant as a model in drafting its Constitution, he said the latter had been adopted prior to ratification of the Covenant. No penal provisions existed to deal with violations of the Covenant, and no international human rights instruments had been denounced subsequent to promulgating the Constitution.

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Questions by Experts

WALEED SADI, expert from Jordan, said the initial report would promote additional dialogue. The central issue in the questioning was the suspension of democratic processes in Algeria. That action had set in motion several events that had given rise to important concerns.

The first concern, he said, was Algeria's commitment to article 1 of the Covenant that guaranteed the right of the people to chose their form of government. The second was the Government's belief that if the Islamic Salvation Front gained power it would deal a death blow to the democratic process. The inability to reconcile the wishes of the people with the supposed threat to those wishes by the Islamic Front must be addressed.

He asked whether greater efforts could have been taken to reconcile the two opposing concepts and what would have happened if the electoral process had been allowed to take its course. If all political parties had continued to abide by the Constitution, then what threat was represented? The spirit of the Covenant could be reflected in the efforts to reconcile the two objectives of responding to the will of the people and protecting the democratic process.

JANOS FODOR, expert from Hungary, said that up until last year Algeria had made good progress in establishing a constitutional Government. The state of siege and the state of emergency of the past two years had dealt a serious set-back to that process. It was difficult to assess the situation objectively.

The events taking place since the middle of last year had impeded the progress of democratization, he said. The initial report and the subsequent oral response had not sufficiently dealt with the Committee's concerns. The response should have dealt more substantially with the reasons for the establishment of the state of siege and its consequences for human rights.

In referring to specific questions about the Constitution, he indicated that laws still existed allowing sex discrimination in Algeria. Those laws should be repealed.

A number of reports indicated that a number of deaths and cases of torture had been reported in the current state of emergency, he said. The State must end those practices and investigate the incidents properly. A lasting solution to the overriding political problems must be found, before other issues could be addressed.

JULIO PRADO VALLEJO, expert from Ecuador, said the delegation from Algeria had made a praiseworthy effort to answer the Committee's questions. Certain positive constitutional principles had been introduced.

Several areas still presented problems, he indicated, in the implementation and application of laws protecting human rights. For example, the issue of detention proved that while in theory an offender could have a fair trial, the accused might not know the process by which that could be

achieved. What if the accused had not been provided with legal guidance or medical attention. The right to defence might be limited for accused persons because they had received no legal aid.

Another issue was the military court, he said. A majority of the court officers did not know the law. In the military courts there were limitations for the accused.

A series of torture cases had been denounced recently in Algeria, he pointed out. There had been complaints but not sufficient investigation. No official decision had implemented investigation. Firearms had also been used indiscriminately, resulting in wounding and death. What instructions had authorities received, and were they complying? The abuses had been committed against peaceful demonstrators during the current state of emergency. The Committee had received information that such events had occurred. The Government must take stronger measures to protect fundamental human rights under the Covenant.

NISUKE ANDO, expert from Japan, said that developments since the writing of the report had prevented the Committee from examining fully the consequences of the state of emergency.

He said it was always difficult in the beginnings of a democracy to allow all voices to be heard. It was often easier to impose order through dictatorship than to listen to the many voices of a democratic society.

The legal equality of the sexes was a concern, he said. Where was the programme to eliminate all discrimination against women in Algeria? The independence of the judiciary was another issue. Sometimes an elected president participated in the judicial branch. Separation of powers was based upon an historical need to adhere to a basic premise of protecting the integrity of the judicial process.

He also found it difficult to understand the statement that there was no linguistic minority in Algeria. The Berber minority was recognized in the report, but its protection as specified in the Covenant was not addressed in the Constitution. He also wished to know how the values of Islam that were enshrined in the Constitution could exist in conjunction with certain rights contained in the Covenant. How could those values and rights be reconciled?

CHRISTINE CHANET, expert from France, said the written report cited a number of specific reforms which had been interrupted by recent events. People's direct access to the rights in the Covenant had not as yet been enshrined in law.

The suspension of the National Assembly was a serious situation, she said. The Assembly should be able to sit and monitor the process of the state emergency.

She expressed concern over the high number of prisoners held in the detention centers and the restriction on the rights of defence lawyers in the military courts. In spite of assurances, current inquiries into reported torture cases had not borne results in the courts. She reiterated her concern on the issue imposing the death penalty for economic reasons.

The legality and conditions of detention had not been sufficiently addressed, she said. Medical care should be available in all cases of detention. Regarding the independence of the judiciary, she said the powers of the President within the courts was a serious question being examined currently in France. She suggested that the Algerians consider the results of that examination.

BERTIL WENNERGREN, expert from Sweden, said the responses to the initial questions were rather general. The current conditions made it difficult for the delegation to provide more specific information. The questions of the practical implementation of the legal system were not easy to address at present.

He expressed concern over the freezing of the electoral process. Hopefully, the result of the transitional period would be a return to democratic measures in the near future. The unfortunate need to impose a state of emergency and suspend democratic processes would, perhaps ultimately lead to a number of positive steps to return the country to normalcy.

He referred to a lack of specific legal provisions to protect the rights contained in the Constitution. The actual legal functioning of the rights in the Constitution needed to be elaborated upon in a future report.

REIN AVOVICH MULLERSON, expert from the Russian Federation, said Algeria's future reports should discuss not only the constitutional and legal provisions concerning implementation of the Covenant but also the difficulties faced by the country in seeking to ensure respect for human rights, as well as relevant statistics.

He asked how the annulment of the results of the general elections held last December should be evaluated. He did not understand what was meant by the notion of a State religion, and how other religions could be equal, as there might be some preferences for a State religion. Clarification was needed.

VOJIN DIMITRIJEVIC, expert from Yugoslavia, said that after such profound changes in Algeria, the report ought to be supplemented by an oral presentation. The Committee's concern about the legal provisions described by the report had been overshadowed by the events leading up to the state of emergency. It had wanted explanations, but those given had been of a formal nature; the Committee should still receive a short substantive addendum to the report, in order to understand why the measures had been necessary.

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Those measures, he continued, suggested other problems. The possibility of being deprived of liberty was increased, and the reasons for such deprivation were now usually based on suspicion, reminiscent of a police state. The vague values of Islam and the Revolution, as proclaimed in the Constitution, were also liable to abuse.

Article 27 of the Covenant, he said, applied to all minorities, not just national minorities, and States could not avoid its application simply by declaring that minorities did not exist. There was also a contradiction in the report's statement that there were no minorities, and that statistical analysis was made impossible by the structure of the census, since the report later referred to a linguistic minority. There was no danger for the unity of the Algerian nation if its citizens were allowed to display their particular characteristics openly. Such behaviour did not contradict their good citizenship.

OMRAN EL SHAFEI, expert from Egypt, said events in Algeria took into account political changes in the entire region, and reflected a reaction to what was happening world-wide. He asked whether a dialogue was being established in that country between the parties concerned, in order to restore the rule of law. He asked how a dialogue could begin when the parties were removed from it, or when one or two parties to the dialogue were constrained in their freedom and could not effectively take part.

The Chairman, FAUSTO POCAR, expert from Italy, said the report showed how much progress there had been in Algerian legislation. It was even more serious that laws were being violated by the present state of emergency which had been proclaimed during the electoral process. The Committee would like information on further developments and on how they affected civil and political rights, which could be provided in future reports.

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United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-fourth Session
1129th Meeting (PM)

HR/CT/178
27 March 1992

HUMAN RIGHTS COMMITTEE CONCLUDES EXAMINATION OF ALGERIA'S REPORT

To Take Up Peru's Second Report on 31 March

The head of the Algerian delegation told the Human Rights Committee this afternoon that his Government was anxious to restore the democratic process as soon as possible.

In a final statement to the Committee, following the presentation of Algeria's initial report under the International Covenant on Civil and Political Rights, Noureddine Benamara said the imposition of a state of emergency had been unavoidable. Since the adoption of the new Constitution, the transition to democracy had been too hasty and Government action had been necessary to respond to a substantial threat to that democratic process.

Responding to specific questions, he indicated that the freeing of a number of prisoners in the near future would improve the medical situation in the detention centres. He also further detailed his Government's plans to ensure equality of the sexes and the availability of legal aid.

The Committee will meet again at 10 a.m. on Tuesday, 31 March, to take up the second periodic report of Peru.

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For information media—not an official record

United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-fourth Session
1133rd Meeting (PM)

HR/CT/179
31 March 1992

HUMAN RIGHTS COMMITTEE SPEAKERS STRESS 'INSTITUTIONALIZATION' OF VIOLENCE IN PERU AND GAP BETWEEN THEORY AND PRACTICE

Continues Consideration of Peru's Report On Its Implementation of Covenant on Civil and Political Rights

The "institutionalization of violence" in Peru, and the related gap between theory and practice in respecting human rights there, were stressed by members of the Human Rights Committee this afternoon as it began debate on that country's second periodic report on its compliance with the International Covenant on Civil and Political Rights.

The experts, who serve in their individual capacities, acknowledged the difficulties faced by the Government of Peru in implementing the Covenant, due largely to terrorist and drug trafficking activities, but said there had been thousands of cases of disappearances, rape, torture, killings and other forms of violence, and that derogations from the rights enshrined in the Covenant seemed extensive. Many of them felt that more details should have been provided in the report, particularly on how the successive states of emergency affected the human rights situation.

Questions were asked by the experts from Ecuador, Cyprus, Costa Rica, the Russian Federation, Jordan, Hungary, the United Kingdom, France, Austria, Yugoslavia and Nicaragua.

The representative of Peru, introducing her country's report, said the Government had attempted to preserve the rights and democratic institutions of the State as it faced the constant acts of terrorist violence by the Sendero Luminoso (the Shining Path). The activities of terrorist groups were, however, no excuse for excesses by the security forces in defending the people and institutions.

She also said there were no insurgent groups in Peru, only terrorists, and that rights of insurgency could not be applied to terrorists. The special situation of violence affecting her country meant there had to be a period of adjustment to enable a re-establishement of respect for the law by the Government. While there had previously been some "unfortunate" situations, a new judicial system had emerged to prevent their recurrence.

When it meets again at 10 a.m. tomorrow, 1 April, the Committee will continue its consideration of Peru's report.

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For information media--not an official record

Committee Work Programme

The Human Rights Committee met this afternoon to take up the second periodic report of Peru on its compliance with the International Covenant on Civil and Political Rights. Among the issues it will focus on are the successive states of emergency, subversive movements and drug trafficking, disappearances, extrajudicial executions and the use of torture. The Committee is also concerned about the infant mortality rate among ethnic groups, the decriminalization of inmates of prison institutions and the employment of minors.

Peru's Report

The Committee had before it the second periodic report of Peru (document CCPR/C/51/Add.4), according to which the states of emergency in that country have been due mainly to the activities of subversive movements in certain areas. In most cases, shut-downs, strikes or similar work stoppages have been settled through ordinary legal procedures. The country's armed forces and police scrupulously observe the law and the Constitution, notwithstanding the problems they have had to face with subversive groups "probably linked with drug trafficking".

Complaints about alleged detentions and disappearances of persons are being investigated by the various human rights monitoring bodies, according to the report. The Government has proposed the establishment of a national committee for the protection of human rights.

According to the report, it is the Government's policy to provide training in human rights for the police and the staff of prison institutions. There is also a policy of decriminalizing the inmates of such institutions. There is genuine respect for democracy, and freedom of opinion and of the press are well established in Peru. The new Penal Code provides for the punishment of any public official who, abusing his position, suspends or closes any social communication media or prevents its circulation or dissemination.

Unconditional respect for the rights of ethnic, religious and linguistic minorities in Peru is fully guaranteed by the Constitution, which provides that peasant and indigenous communities have a legal existence and capacity. Their community work and use of the land as well as their economic and administrative organization are autonomous. In addition, the Constitution guarantees the right of the Quechua, Aymara and other indigenous communities to primary education in their own languages.

International financial problems resulting in economic constraints have weakened the health and education infrastructure and have prevented the full development of a welfare policy, especially for low-income groups, the report states, adding that Peru has made every effort to develop campaigns to prevent endemic diseases by means of a network of health centres and through State hospitals.

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The report goes on to state that men and women are equally entitled to enjoy and exercise civil rights in Peru, where women have held the highest posts in public administration. There are many women university students, and women work in private enterprises and in all the professions.

Under the Constitution, the rights of public servants to form trade unions and to strike do not apply to State officials who have decision-making power or who occupy positions of trust or to members of the armed forces or the police.

According to the report, there is complete compatibility between the Covenant and the Peruvian Constitution. Peru is engaged in a "continuing process of bringing national legislation into line with international human rights standards". The new Penal Code clearly defines any incitement to racial discrimination as an offence which it punishes by severe penalties.

Peru's Report Introduced

PATRICIA VARGAS RODRIGUEZ, representing the Ministry for Justice of Peru, introduced the second periodic report, saying that the person who had intended to deliver the report to the Committee had suffered death threats from the Sendero Luminoso (the Shining Path). Such threats were indicative of the current situation in Peru. It was important to know the present dynamics of violence in Peru. The Sendoro Luminoso had used every method of violence and had violated all fundamental human rights. Details of the atrocities were not necessary to illuminate the violations of the articles of the Covenant by the terrorists.

The Government, she continued, had attempted to preserve the rights and democratic institutions of the State as laid down in the Constitution. Constant efforts to enrich the observance of human rights had come up against terrorist violence as the main obstacle to progress.

First, she said, the Government believed that the activities of terrorist groups were no excuse for excesses by the security forces in defending the people and institutions. Secondly, the criminal acts committed by the Sendero Luminoso and others could only be described as terrorism. There were no insurgent groups in Peru, only terrorists. Rights of insurgency could not be applied to terrorists. Thirdly, certain fundamental rights could not be derogated or suspended. The special situation of violence affecting Peru meant there had to be a period of adjustment to enable a re-establishment of respect for the law by the Government. Punishments and sanctions must be laid down for the violators of rights. On some occasions, rights had not been observed. The Government's commitment to defend Peruvian society had created unorthodox methods.

The current period, she stated, was one of learning in the judicial and social spheres. Within that context, elements of an appropriate and coordinated strategy to ensure human rights had been implemented. Recent action by the authorities had demonstrated the emergence of a new judicial system to prevent the recurrence of unfortunate situations. A report on

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violence and pacification by a commission in the Peruvian Senate was an example of a State transforming itself into a dynamic entity. In the face of violence and terrorism, it was attempting to enforce human rights.

The international community had observed that Peru was attempting to resolve past difficulties, she said; in three successive years, the Human Rights Commission had approved without a vote the draft resolution presented by Peru on acts of violence and drug trafficking.

Questions on Constitutional, Legal Framework

Replying to written questions submitted by the Committee on the constitutional and legal framework within which the Covenant is implemented, Ms. VARGAS (Peru) said the Government was reforming the penal laws. Under international law, Peru punished certain crimes committed abroad by its nationals. People who felt that their rights under the Covenant were being violated could bring their cases before the appropriate national and international bodies.

As to the states of emergency, she said certain excesses had occurred at those times, due to an improper interpretation of the Constitution, but the judiciary power had maintained its competence in accordance with the prevailing norms. Guarantees of the human person were laid down by law.

The Government, she went on, was determined to punish terrorist groups and drug traffickers. The memorandum of understanding signed in 1991 between the Governments of Peru and the United States to combat illicit drug trafficking contained provisions on compliance with human rights in implementing the drug strategy.

Actions taken in relation to the Optional Protocol to the Covenant, concerning communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant, included coordinating meetings to review the Government's human rights policy, she said.

Experts' Questions

JULIO PRADO VALLEJO, expert from Ecuador, expressed regret that Peru's Prosecutor for Terrorism could not attend because of the death threat. He said there was a substantial difference between the body of the report and the actual practices in Peru. There were always difficulties encountered in all countries in implementing the Covenant. No mention was made in the report of the difficulties the Government might be facing.

He said President Fujimora of Peru had made a great effort to resolve the enormous economic and social problems of the State. The internal violence and the international indebtedness had continued. The President had publicly expressed a desire to support human rights. Unfortunately, the situation of

human rights had progressively worsened in the past years. The terrorist groups, military and paramilitary forces had all committed acts of violence. The efforts to put an end to such violence had not succeeded.

The terrorist violence could not justify violence by the forces of public order, he continued. The State could not end violence by committing violence itself. Recently a series of legal provisions by the State had serious consequences. Special powers had been given the armed forces in emergency zones. Many incidents of trampling on human rights had been reported. It was not just a matter of misinterpretation of the Constitution. There had been an institutionalization of violence in Peru.

An entire wave of violence, he said, had resulted, in spite of evidence of good will from the President. No effective norms or guarantees existed to protect fundamental rights on a day-to-day basis. In the emergency areas, the military and police forces did not allow the application of habeas corpus or any other basic right.

Further, he said, no military person had been brought to trial for violations of human rights. On one occasion, two officials had been brought before a military court, but the proceedings were suspended. No courts or remedies for violations of human rights existed in Peru.

It was not just the armed forces, he continued. The paramilitary groups were allowed to move freely around emergency areas. It was impossible for even the minimal respect for human rights to exist in those areas. Successive states of emergency had been declared and 50 percent of the area of Peru was now under a state of emergency.

He asked what rights had been suspended under the states of emergency? What other rights had been derogated from? The law of 1985 had left nearly all legal decisions up to military commanders. Judgement could be reached by those commanders without recourse to civilian authority. A virtual military government had jurisdiction over all violations of human rights. No civilian authority could take action. Claims by families of victims had not been acted upon. A large number of complaints listed by several international bodies had not been investigated.

The disappearances, the killings and the acts of torture that had been reported, he said, had not been investigated. Family members could complain to judges, but the judges had no authority over the military. Civilian authorities had been denied access to places under military control. Even the so-called death squads had free movement within the emergency zones. There seemed to be support for those squads in the military.

A very grave situation now existed for the peasants in Peru, he stated. They were being forced to side with civilian defence groups on one side and being attacked by the Sendero Luminoso and drug traffickers on the other. The Government distributed weapons to the peasants which had led to an intensification of the violence.

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The Committee, he said, could only draw attention to the current situation, it could not resolve the situation.

ANDREAS V. MAVROMMATIS, expert from Cyprus, said the purpose of the Committee's consideration of certain matters brought to its attention was not condemnation. No country faced with the danger posed by terrorists, as in Peru's case, could claim to be completely free of human rights violations. The Committee's purpose was, rather, dialogue, and to draw Peru's attention, in its endeavour to eliminate the dangers to democracy, to the need to respect the rights both of the innocent and of the guilty.

The report referred only to constitutional and legal provisions, not to practice or practical difficulties in implementing the Covenant, he went on. It did not give the necessary details, particularly in discussing the states of emergency.

As Peru had ratified the Covenant two years before promulgating its new Constitution, why was the latter's reference to discrimination limited only to sex, race, religion, opinion or language, whereas the Covenant also mentioned colour, political or other opinion, national or social origin, property, birth or other status? he asked. He would expect a new Constitution to include such provisions.

He asked for more information on restrictions on the exercise of the rights to amparo or habeas corpus during the states of emergency. Who were the members of the National Council for Human Rights? Notification to the Secretary-General of the states of emergency should have included information on which articles of the Covenant had been derogated from, and why.

He did not understand how a public emergency threatening the life of the nation could be cured by a three-day state of emergency, he continued, asking also for more information on the "ordinary legal procedures" through which shutdowns, strikes or similar work stoppages had "in most cases" been settled during the states of emergency. An incomplete answer had been given regarding communications under the Optional Protocol.

FRANCISCO JOSE AGUILAR URBINA, expert from Costa Rica, said the report dealt only with constitutional and legal norms. It did not reveal the actual situation in Peru.

Peru was a State of constant violence, he continued. Unless the rights being infringed in the current state of emergency were dealt with, the other issues could not be addressed. The current situation existed because of acts of terrorism by the Sendero Luminoso and by the armed forces' reactions to the terrorism. References had been made to the disappearance of thousands of persons.

In spite of the fact that Peru had admitted to the violations of human rights in the country, he said no military officer had been held responsible for those crimes. The derogations that had occurred in the various states of emergency required more information from the Government. The application of

the state of emergency did not seem to relate logically to the provisions of article 4 of the Covenant governing conditions threatening the life of the State which required the declaration of states of emergency.

He went on to say Peru had been asked to supply information about the murder of certain journalists. To date, no reply had been made.

He also wanted to know why and how the states of emergency had been expanded since 1983. What rights had been specifically derogated from in the states of emergency? The decree law of 1991 had extended the powers of the military authorities over the popularly elected civilian authorities. How was that possible? If the civilian authorities still maintained their powers, why were they denied access to areas controlled by the military?

The Government had defined the acts of the Sendero Luminoso as terrorism, but had referred to "excesses" of the armed forces, although the disappearances and elimination of persons engineered by the military were far more than excesses. Also, what was the lowest court where persons could go to seek basic rights like habeas corpus? Did the citizens have access to and knowledge of the Covenant?

Nothing was said in the report about the impact on the average Peruvian of penalties for drug trafficking, he also stated.

REIN AVOVICH MULLERSON, expert from the Russian Federation, said he was aware of the difficulties faced by the Government of Peru -- particularly in fighting drug traffickers -- which were not conducive to the implementation of human rights instrument. However, human rights violations could never be justified by the necessity to combat terrorist activities or crime.

He asked for more information on members of the security forces who had been tried for human rights violations, and on allegations concerning the May 1988 massacre. Why was there a reference only to the disadvantaged masses and not to the human being with regard to respect for human rights in Peru? he asked.

WALEED SALI, expert from Jordan, said the legal basis for the Covenant was adequate in a theoretical sense, but there was a considerable gap between theory and practice, particularly regarding the applications of articles 2, 3 and 4 (concerning discrimination, equality between the sexes and states of emergency). Amnesty International had documented thousands of cases of disappearances, rape, killings and so on, both in zones where the states of emergency had been declared and in zones where they had not been declared.

Was there the political will in Peru to translate the logistical basis of human rights into practice? he asked. Derogations from the rights enshrined in the Covenant seemed extensive, since the military rulers applying states of emergency had excessive powers, and the civilian Government did not have enough control over the military operations.

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JANOS FODOR, expert from Hungary, said the report did not represent the true difficulties facing the Peruvian Government. The introductory remarks were more useful in that regard.

The terrorist activities in various parts of Peru, he continued, had resulted in the declaration of states of emergency in certain zones. Had the Government taken any steps to resolve the reasons that led to the declarations?

Regarding a state of siege, the Peruvian Constitution did not list rights that could be derogated from, he said. What rights could be derogated from in the state of seige as opposed to a state of emergency?

Could the Peruvian delegation provide more complete information about the willingness of the Government to respond to requests of the Committee concerning follow-up actions taken under the Optional Protocol?

ROSALYN HIGGINS, expert from the United Kingdom, said the Committee could offer assistance to the Government in maintaining human rights, if it had more information.

She questioned how notification of derogation of certain rights in the states of emergency had taken place. The record of Peru in accomplishing the process in the past had been to a degree rather impressive. Until 1988 there had been a routine notification of the articles derogated from. In June of 1990 a notification was received of rights derogated from. In the spring of 1991 a notification of a state of emergency was received, but no list of suspended rights was made. Had the new Government lost sight of the notification process? The articles derogated from and the provinces under the state of emergency should be listed.

The follow-up to particular communications by the Committee about the Optional Protocol were very important, she said.

CHRISTINE CHANET, expert from France, said 20,000 people were said to have died over a 10-year period owing to violence in Peru. Since 1983, 80 different states of emergency had been reported to the Secretary-General. More information was needed in response to the Committee's questions under article 4 of the Covenant. What were the criteria justifying the states of emergency? she asked. What measures had been taken with respect to the articles that could not be derogated from?

On the constitutional framework, she requested more information on the bodies responsible for human rights. There seemed to be a need for such bodies, but she wondered about the value and effectiveness of so many bodies. What were their respective powers? Very little information had been provided regarding the judicial system as it presently operated. It was odd that the Public Prosecutor's office was responsible for guaranteeing the independence of magistrates.

Provisions for habeas corpus were very ineffective, she continued; few decisions were carried through to the Supreme Court. Given how difficult it

was to exercise habeas corpus for violations that had already occurred, how would "preventive" habeas corpus, in which a victim anticipated his rights would be violated, be implemented?

KURT HERNDYL, expert from Austria, said the report had not referred to the real assessment of the situation in the country. No statistics about the practice of tribunals or the courts had been given.

He asked if the report had been drafted with the National Council for Human Rights or at least with their input, and said the non-governmental organizations should be involved in compiling the report.

The report had referred to the crisis in the State, and it had also pointed out that the Government was responsible for the observance of all human rights.

The pure theory of law, he said, seemed to be carried out in the Constitution. Norms of international law seemed to exist on the constitutional level. He asked how the Covenant could be used by individuals in court proceedings?

VOJIN DIMITRIJEVIC, expert from Yugoslavia, said the report's references to the states of emergency were very brief. The Committee was forced to rely on other sources for information on the terrorist groups in Peru. The official interpretation by the Government of the actions of the terrorist group was necessary. What were the reasons for the imposition of the states of emergency?

He expressed concern that non-governmental organizations in parts of Peru had ceased to exist. Some of them, such as Amnesty International, had even come under attack. The Government had a responsibility to protect such organizations.

ALEJANDRO SERRANO CALDERA, expert from Nicaragua, said he had not got a clear picture of the human rights situation in Peru. The problem undoubtedly was interlinked with social, economic and drug trafficking problems.

Two kinds of violence existed, he said -- violence by the terrorist groups and by the government authorities. Socio-economic violence and ethnic problems were also a part of the whole picture, as were the drug-trafficking problems. The neo-liberal policies had helped create the crisis. Monetary and fiscal criteria to lower debt had translated itself into unemployment. The crisis of institutions and the crisis of the individual had merged as part of the fabric of life in Peru.

The situation in Peru could not be controlled exclusively by institutions, he said. It required exceptional measures and the coming together of all the elements of the society.

He asked how recourse to the courts worked, and what was the basic level of such recourse? What was the role of the National Council of Human Rights? And what powers were given to the military in the states of emergency?

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United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-fourth Session
1134th Meeting (AM)

HR/CT/180
1 April 1992

HUMAN RIGHTS COMMITTEE CONTINUES CONSIDERATION OF PERU'S REPORT ON IMPLEMENTATION OF CIVIL AND POLITICAL RIGHTS COVENANT

The Government of Peru this morning told the Human Rights Committee it was not denying mistakes could be and were being made, but that faced with an enemy who chose unconventional methods, the normal course for the free expression of one's views had to be set aside.

Speaking for the Government were a representative of the Ministry of Justice and a member of Peru's Permanent Mission to the United Nations, who answered questions posed earlier by the 18-member committee of experts on Peru's compliance with the International Covenant on Civil and Political Rights.

They said the fact that democracy was part of the daily lives of millions of Peruvians must be borne in mind as a background to anything that might be said about the country. What had been referred to as "terrorism from above" must be placed in the proper context -- namely, that of "terrorism from below". The country's institutions had been adjusting in the context of the violence created by the Sendero Luminoso (the Shining Path).

Also, they said members of the military were punished for human rights violations and that police officers were being trained on human rights. The Constitution dictated that the "imminent danger of war" was sufficient reason for imposing a state of siege. While there were restrictions on rights in emergency areas, a bill now before the Senate would ensure the protection of such rights as habeas corpus.

Statements were made by the experts from Ecuador, Costa Rica, Cyprus, Austria, Sweden, France, Hungary and Jordan, who asked questions about the constitutional and legal framework within which the Covenant was implemented and about the right to life, liberty of the person and treatment of prisoners. Concern was expressed about the numbers of disappearances and missing persons, the exoneration of the military from responsibility for acts committed under orders, and the inability of the courts to enforce their jurisdiction over emergency zones.

The Committee, consisting of experts serving in their individual capacity, monitors compliance with the Covenant by States parties, who at present number 102. Its current session, which began on 30 March, will continue until 10 April.

When the Committee meets again at 3 p.m. today, it will continue its consideration of Peru's report.

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For information media—not an official record

Committee Work Programme

The Human Rights Committee met this morning to continue its consideration of the report of Peru. (For background, see Press Release HR/CT/179 of 31 March.)

Reply by Peru

JORGE LAZARO (Peru) said his Government had issued new norms after the report which covered the very concerns and comments of the Committee. One obstacle to implementing the International Covenant on Civil and Political Rights had been terrorism. There had been two absolutely impeccable elections. Democracy was part of the daily lives of millions of Peruvians who came to the polls despite threats and murders. That dedication to democracy was a devotion to civil and political rights.

Democracy existed throughout the length and breadth of the country, he continued. That must be borne in mind as a background to anything that might be said about Peru. Peruvian violence had other roots, but democracy would continue to exist quite apart from and despite terrorist violence.

Peru, he said, had begun to modernize its economy, which went hand in hand with the vitality of democratic institutions. Since 1980 there had been a growing emergency because of a group of terrorists whose goals could be understood quite clearly from their publication, El Diario.

He stated that what had been referred to as "terrorism from above" must be placed in the proper context -- namely, that of "terrorism from below". The situation in Peru seemed to be one of the State security forces fighting the Sendero Luminoso (the Shining Path), with a population caught in the middle, in the worst possible social chaos.

There was no policy of systematic violation of human rights, he went on. The country's institutions had been adjusting and evolving quite obviously in the context of the violence created by Sendero Luminoso. Sometimes one took a step back. The Government was not denying that mistakes could be and were being made. Faced with an enemy that chose unconventional methods, one had to set aside the normal course used to express freely one's own views.

Faced with that new phenomenon, the Government had to defend its democracy in the process. It was necessary to introduce corrective measures to improve the system, and to punish those found guilty of human rights violations. Despite the setbacks, there was a forward movement. The Government must make the best possible use of the law but not only of existing laws; others had to be added where there was a failure to respect human rights.

Peru was also aware, he said, that the situation of the peasants required special efforts. The Government had been innovative in that regard. For a development strategy to be viable, it must include their political participation.

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PATRICIA VARGAS RODRIGUEZ, representative of the Ministry for Justice of Peru, said that rights suspended in the states of emergency were the rights to personal freedom and security, inviolability of the home as well as the rights to meetings and movement. Excesses committed by the military in the struggle against terrorism were carefully analysed by the the Military Council and the civilian authorities. Members of the military had been punished for violations of human rights. In the Supreme Military Justice System from 1989 to 1991, 70 trials had been held involving human rights violations. The penal code had been strengthened for punishment of human rights violators.

Laws were approved by the Congress, she continued, and promulgated by the President. A legislative decree by the Congress enabled the President of the Republic to carry out the legislation.

She said difficulties encountered in implementing the rights of the Covenant varied considerably. Logistical difficulties, the lack of an infrastructure, the low pay in the administrative and judicial systems all had created problems. The codes of justice that had been used until recently dated from 1936 and 1928. In 1991, the new criminal code and the new criminal procedures code were promulgated. They had not resolved all the problems but they had demonstrated the intent of the Government to defend human rights and to punish those who violated such rights.

The military commanders, she said, assumed control of emergency areas because the civilian authorities had been assassinated or threatened. The military had to intervene to restore internal order. The commanders were supposed to maintain public order, but the Government had the supreme responsibility for law and order. Executive decrees through the national defence system implemented the law.

She cited the draft law that assigned regional powers to military commanders in the emergency areas. It had been approved by the Congress. The law reaffirmed the powers of the regional governments. It had established communication and coordination networks in the areas affected. Legislation had also been passed to strengthen the Government's role in the emergency zones.

The state of siege, she said, was for the entire territory of Peru. The Constitution stipulated that imminent danger of war was sufficient reason for the declaration of the state of siege. The Government had described the Sendero Luminoso and other groups as terrorists and not insurgents by referring to the Constitution. The Constitution stated that those groups who sought the establishment of anti-democratic regimes without respect for human rights could not be classified as insurgents.

Mr. LAZARO (Peru) said regarding "preventive" habeas corpus, that is, where there was a threat to personal freedom -- whether from acts or omissions by official authorities or individuals -- any action for habeas corpus could be introduced. That was explicitly stipulated in the Constitution and the laws.

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The law on preventive habeas corpus was what the Government had been applying, he went on. The threat to habeas corpus had to be imminent, probable and possible, and the person threatened had to be convinced he was threatened for habeas corpus to take effect. That was the jurisprudence in Peru on preventive habeas corpus.

The Constitution dictated that legislative powers could be delegated to the executive, he continued; that was new. To do so was not extraordinary or exceptional, but part of normal procedures. However, a specific time period must be stipulated, and the President must report to the Congress on the legislative decrees enacted in implementation of the delegation of powers.

He went on to say that when it came to specific problems requiring urgent treatment, what was contemplated were immediate actions to strengthen the judiciary. As an example, at the most recent summit on drugs, in San Antonio, Texas, President Fujimori had stressed development rather than the repressive elements of the struggle to combat drug trafficking.

As to the manner in which shortcomings of the judiciary were being tackled, he said this was the third year that assistance had been provided by the United States Agency for International Development (USAID) -- totalling $3.4 million -- for a programme for the administration of justice. Police officers were being trained, nd a pilot human rights course for them was planned for next year.

Ms. VARGAS, answering questions about the independence of the judiciary, said the National Council of Judges made proposals to the President for the appointment of magistrates. The Supreme Court investigated the way in which judges functioned. The office for monitoring the judiciary was responsible for investigating judicial conduct. The independence of the magistrates was manifest in the structure of the Council.

She said a legislative decree had been enacted to authorize prosecutors to go to police stations, military installations and other detention centres to look into instances of detainees alleged to have disappeared. The State would attempt to deal with all the allegations that had not been investigated in the past.

Mr. LAZARO said the there were certain restrictions of rights in the emergency areas. Since 1981, several states of emergency had caused the suspension of a number of rights. Nevertheless, a current Senate bill would ensure that rights such as habeas corpus would be guaranteed.

He said the President of the Council for Peace in Peru, a council involving many elements of Peruvian society, had stated that the national plan for the pacification of the country would be submitted to the executive branch before the middle of April. It was the first such bill introduced by the Council. It would include proposals to ensure the full observance of civil and political rights in Peru.

Right to Life, Treatment of Prisoners

JULIO PRADO VALLEJO, expert from Ecuador, said the groups that had taken up arms were not simply subversive, but used terror to undermine Peruvian society. There was no reason for any distinction to be made; efforts must be supported to strengthen democracy in Peru. Excesses had perhaps occurred in that armed struggle, on both sides; what was important was to punish the guilty, particularly when they were agents of the States.

What kind of punishment had been meted out? he asked. Had the guilty parties been found and punished, and if so, how? There had been violations, particularly in areas controlled by the military, despite good will. What action had Peru taken once it had received the report of the Special Rapporteur on forced disappearances? Mr. Escobar Piñeda, the Special Prosecutor for Disappearances, had received so many threats for saying there had been violations on the part of the military that he had had to resign and was now in the United States.

FRANCISCO JOSE AGUILAR URBINA, expert from Costa Rica, said Peru had still not responded to the comment that there was incompatibility between the Covenant and the proclamation of a three-day state of emergency. Could someone bring an accusation of unconstitutionality? What actions had been taken to strengthen the judiciary power with regard to the armed forces?

ANDREAS V. MAVROMMATIS, expert from Cyprus, said several questions had remained unanswered. He said his questions had been clear and requested the delegation to respond in the meeting or afterwards in writing.

Regarding the prosecutors in emergency areas, Ms. VARGAS, representative of the Ministry for Justice of Peru, said the recent law passed had allowed the prosecutors to enter the places where detainees were held.

Mr. LAZARO (Peru), citing the statistics on the missing persons available for 1990 and 1991, said they indicated progress had been made. The Committee should appreciate the context in which the Government was endeavouring to promote human rights. In a number of cases, the Government had been able to respond specifically to reports of missing persons.

Ms. VARGAS said the Constitution specified which citizens could petition the Court of Constitutional Guarantees.

In returning to other questions on the right to life, she said that cases of disappearance, torture and executions were covered under the provisions of the penal code. Recently a legislative decree allowed representatives of the ministry to enter police stations or military installations to check on the condition of detainees. That provision was designed to avoid disappearances. If a mayor or public official were the victim of drug traffickers, the family would be entitled to compensation.

She went on to say regulations did exist to control firearms used by police and other non-military persons.

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The Government had developed an overall plan of action for infants, she continued. The responsibility for family welfare had been shifted to the Council of Ministers to better meet the needs of children.

She said again that the Constitution of Peru allowed for the suspension of certain rights in the case of a state of emergency. No persons could be held without contact with family or legal aid, however, in pre-trial detention.

The Ministry of Justice, she said, was responsible for the rehabilitation policy in the prison system. Decriminalization was part of that process.

KURT HERNDL, expert from Austria, said it was obvious that the Government had to apply a certain measure of force, but human rights, and especially the right to life, were being violated in applying that force. There was almost impunity in effect for those acting against the insurgency forces.

The principle of collective responsibility was being applied, he went on, and civilians were being forcibly recruited for the tasks, bringing people into the combat who had nothing to do with the conflict as such. They thus became the innocent victims of actions for which the State was at least partially responsible.

He said there were still reports of extrajudicial executions and of large numbers of disappearances. What measures had been taken to combat those phenomena? he asked. Reports were also being received that the armed forces, in their sweeping operations and during interrogations, also resorted to torture.

The Government was attempting to educate people and punish excesses, he continued. Although there were many cases where the military had been punished, he wondered if the military authorities were the right ones to mete out that punishment, and how many military persons were eventually pardoned.

To call the training of police on human rights "adequate" was perhaps an exaggeration, he continued. He asked what Peruvian law stipulated about the separation of accused persons from convicted prisoners, as provided by the Covenant, and of offenders younger than 18 years from other convicts.

BERTIL WENNERGREN, expert from Sweden, said the legal system of Peru seemed to be a good one. The difficulties had occurred in its application.

He referred to the new civil code in Peru and the provisions "working to the advantage of the unborn child" mentioned in the report. What other measures were taken to protect the unborn child? Also, was abortion prohibited? Were rape victims entitled to abortions? What statistics existed on abortion in Peru?

Criminal responsibility for the abuse of power was another concern, he said. There was an exemption from prosecution in the penal code for a person acting on orders from a higher legal authority. He stated that "compliance to orders" laws were contrary to the Covenant. How many officials had been exempted from punishment under that article of the penal code?

A Presidential decree had also limited action against any official if that official were acting according to an existing norm, he said. What officials had been affected by that decree?

He asked also whether army officers and soldiers were trained like police officers to respect human rights.

CHRISTINE CHANET, expert from France, said that even if there were 117 cases of disappeared persons, and if that were lower than the year before, it could not be regarded as progress. Such matters could not be measured in numbers. That so-called progress was denied by a 1990 report which concluded that there would be a quasi-exponential increase in violence between 1990 and 1995, and a higher number of deaths and disappearances than during the previous decade.

If a parallel power existed based on military or paramilitary force, and not on law, and if it had greater power than the democratic authority, she continued, then it was difficult to claim that the country in question was a democratic State. Members of the armed forces were freed for acting under orders; did that not guarantee impunity for certain persons? she asked. Was that not a danger to democratic order? Were those people totally exonerated from responsibility, even when an entire population had been massacred, or in cases of torture and extrajudicial execution?

She asked if there was forced recruitment in order to fill the ranks of self-defence militia, and whether there was any limit on how long a person could be held before being brought before a judge.

JANOS FODOR, expert from Hungary, referring to prison conditions in Peru, said he wanted to know about the health care and the sanitary conditions. Was there harsh treatment by officials in the prison? Were there statistics on the number of complaints by prisoners?

WALEED SADI, expert from Jordan, said the primary issue in Peru was the overall human rights situation. The gap existed between the laws and the operation of the laws.

He said he was led to believe that there was no serious effort to investigate human rights abuses. Had the administration spoken out strongly against the reported excesses by the military authorities? Organizations like Amnesty International had reported thousands of cases of abuse. As long as the excesses were allowed to continue, they provided ammunition to the terrorist groups. There should be a more clearly declared policy of the Government. Was there a political will to fight the abuses?

JOSE AGUILAR URBINA, expert from Costa Rica, said the Peruvian Constitution was modern in design, but the implementation of that Constitution was not so well designed.

In the emergency zones, he said, death squads operated with immunity alongside all the other terrible human rights abuses such as torture,

disappearance and execution. What actions were being taken against those death squads?

Attempts had been made, he continued, to bring violators of rights to civilian courts, but the cases had been referred to the military courts, which had not acted. Under military penal law, torture, qualified homicide and other acts would not be considered crimes. The alleged violators were then immune from punishment. Was there any new law being drafted to remove those cases from military jurisdiction?

He also referred to murders committed by civilians in conjunction with the military, he said. Civilians had been provided with weapons to serve on patrols initiated by the military, and there was no way to control such patrols.

The statistics on disappearances in 1990, he went on to say, proved the existence of serious violations of the rights of the accused under detention. Prosecutors were being impeded in the investigation of such cases. What guarantees were given to those prosecutors in their investigations?

The assumption of collective responsibility of persons for aiding terrorists, he said, was a serious human rights violation. Entire villages were being judged collectively by military authorities for the presence of terrorists in that village.

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United Nations

Press Release

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Human Rights Committee
Forty-fourth Session
1135th Meeting (PM)

HR/CT/181
1 April 1992

HUMAN RIGHTS COMMITTEE CONTINUES EXAMINATION OF SITUATION IN PERU

Focuses on Independence of Judiciary, Jurisdiction over Members Of Military, Suspension of Collective Bargaining During States of Emergency

Members of the Human Rights Committee this afternoon continued their examination of the situation in Peru, focusing on the independence of the judiciary, jurisdiction over members of the military, and the suspension of collective bargaining during states of emergency.

Questions, which were asked by the experts from the United Kingdom, Ecuador, Japan, Cyprus, the Russian Federation, Costa Rica, Nicaragua and Sweden also concerned the conditions of service of the judiciary, the national intelligence system, military courts, the backlog of trials and phone-tapping. Representatives of the Peruvian Government replied.

When the Committee meets again at 10 a.m. tomorrow, 2 April, it will continue its consideration of Peru's report on its implementation of the International Covenant on Civil and Political Rights.

(more)

For information media—not an official record

Committee Work Programme

The Human Rights Committee met this afternoon to continue its consideration of Peru's second periodic report on implementation of the International Covenant on Civil and Political Rights.

Right to Life, Treatment of Prisoners

ROSALYN HIGGINS, expert from the United Kingdom, said she understood that about three quarters of the persons awaiting trial were still being held in prisons. The backlog of trials was so great that the prospect of reaching trial was remote. Referring to the number of pregnant mothers and children imprisoned, she asked were there legal obligations not being met under the Covenant in those circumstances or was it a result of rights suspended under the states of emergency?

JULIO PRADO VALLEJO, expert from Ecuador, inquired what would occur if a magistrate did not request the appearance of a detainee for trial. And what would happen to such a prisoner who was being held by the armed forces, and what recourse would he have?

Reply to Questions

JORGE LAZARO (Peru), responding to a question about indiscriminate killings to fight terrorism, said that no such policy existed with the Peruvian authorities. Coercive induction into the armed forces had not been employed by the Government but by the Sendero Luminoso (the Shining Path). There was a legitimate movement of citizens in Peru to organize themselves into patrols.

PATRICIA VARGAS RODRIGUEZ, of Peru's Ministry of Justice, said the person about to be born was considered to have all rights, under the Constitution. The only exception in penal legislation on abortion was for therapeutic reasons, when there was grave risk to the life of the mother or the foetus, in which case it had to be authorized by three doctors.

Statistics on abortion would be provided in writing, she said. As to forced recruitment, there was a law on obligatory military service, in order to train Peruvians of military age to participate in national defence and on that basis to join the armed forces. It applied to all males from 18 to 50 years of age, and to women from 18 to 45 years. Not all citizens were subject to military service, as there was a process of qualification and selection of personnel.

Mr. LAZARO (Peru) said the Government also felt that even one disappeared person would be too many. Cases of executions where security forces had been in charge of the area were only assumed to be related to death squads made up of military personnel. It was true, however, that there were situations where civil and political rights were not being observed. None the less, the Government was taking actions to expand regulations for enforcing those rights.

The capacity for self-criticism did exist, he continued. Laws had been promulgated with regard to national pacification. The fight against terrorism went well beyond the mere question of punishment and included other elements as well.

Ms. VARGAS, of Peru's Ministry of Justice, said the report was unduly optimistic regarding the training of the armed forces and the police in respect for human rights. Representatives of the Ministry of Justice were empowered to enter the places of detention to protect the rights of detainees.

Mr. LAZARO (Peru) said the prison facilities available were too small for the number of detainees. Funds had been appropriated for new prison construction and for the provision of basic services in the prisons. Funds were also being made available for mobile units to transport detainees to trial.

Ms. VARGAS said the Ministry of Justice had recognized the existence of minors in the prisons. It was decreed that a number of children would be released from the prisons.

Ms. HIGGINS, expert from the United Kingdom, said the situation just described might be appropriate for children whose mothers were in prison after sentencing, but this case was of children, only a small percentage of whose mothers had been sentenced. Removing those children from their mothers was a deeply disturbing response; the response should be to make sure that mothers who had not been sentenced were not in prison.

Mr. PRADO VALLEJO, expert from Ecuador, said the decree made reference to the police and the military being on active duty 24 hours a day. Did that mean that everything that happened during those 24 hours came under the jurisdiction of the armed forces and not the civilian courts? he asked. That gave rise to a certain degree of impunity.

Right to Fair Trial, Freedom of Movement

Ms. VARGAS, of Peru's Ministry of Justice, said the judiciary was by law autonomous and impartial. The Supreme Court was empowered to investigate any function of the judiciary. Sanctions and disciplinary measures existed to enforce that power. The constitutional precept guaranteeing the right to legal representation was supported by the existence of a programme of free legal advice. The special courts in Peru were the military courts.

The maintenance of public health were grounds for the expulsion of aliens. Participation in acts of sedition, mutiny or illicit acts that were a clear danger to public security were also grounds, she continued.

The public exercise of any religion was guaranteed as long as it did not offend the public order, she stated. The Catholic Church did not enjoy any privileged position in Peru.

Members of the police and armed forces could not vote or hold office, she said. They had a separate purpose: to guarantee the safety and territorial integrity of the State.

NISUKE ANDO, expert from Japan, asked if voting was public did that mean that judges cast their votes in such a manner that the public could see how they voted? The next report should contain more information on the freedom of expression. What limitations, if any, were set on trade union rights under the emergency exclusion?

ANDREAS MAVROMMATIS, expert from Cyprus, said security of tenure and safeguards in respect of disciplinary actions did not seem to be part and parcel of the independence of the judiciary in Peru, whereas traditionally they were the classic guarantees of that independence.

Who was responsible for the appointment of judges? he asked. Who were the members of the Council of Adjudication? Security of tenure normally meant that one continued to serve unless subjected to disciplinary actions, and that one's conditions of service could not deteriorate. Which guarantees had been suspended under article 14 of the Covenant as a result of the state of emergency?

What were the military courts? he asked. Who were they composed of; who could appear before them? Must members of the military serve as lawyers? What was their jurisdiction in respect of civilians or of military people who had presumably not acted within the line of duty in committing offences?

He said collective agreements had been abrogated last summer by virtue of the powers granted the State under the emergency, and collective bargaining had been suspended. Especially in the case of contracts achieved through collective bargaining, how could one invoke the emergency to abrogate existing agreements? he asked. Did the State provide for compensation for those affected, financially or otherwise, by that abrogation?

He also queried whether the penalty of exile was resorted to during the emergency, and what it entailed.

REIN AVOVICH MULLERSON, expert from the Russian Federation, asked who could dismiss charges against violators of rights when the allegations involved military persons.

He asked what reasons could be given for excluding the military from the electoral process? What were the consequences of such exclusion? Did it isolate the military and create any sense of exclusivity in military personnel?

FRANCISCO JOSE AGUILAR URBINA, expert from Costa Rica, inquired further about the independence of the judiciary. How was impartiality of judges guaranteed? Legal aid, he said, must be impaired by a shortage of lawyers. How was that shortage dealt with?

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He requested more information about what specific laws could be applied in a military tribunal. When could courts meet in private for reasons of national security? There also seemed to be no appeal from the rulings of the Supreme Military Council.

Conditions for freedom of the press, he continued, were reported to be adverse in Peru. Could a Peruvian who published an article critical of the State be tried for treason? Could a person be imprisoned for denying information to the newly decreed national intelligence system?

He stated that the denial of voting rights to the military often created a feeling of isolation in the military establishment. The military almost becomes a separate society. Had the Government considered the consequences of that situation?

ALEJANDRO SERRANO CALDERA, expert from Nicaragua, asked what the criteria were for a case to come under military jurisdiction. What law was involved -- the penal code or special laws? He wondered whether the state of emergency meant the suspension of the principle of the exclusivity and unity of the jurisdictional function, as provided under the Covenant.

Were there any remedies in respect of the special courts? he asked. Did the legal process provide for appealing the rulings of military courts? He also wondered with which body one lodged pleas for habeas corpus or amparo, and who was entitled to lodge them.

BERTIL WENNERGREN, expert from Sweden, asked whether there were derogations from the inviolability of communications during states of emergency. If so, did that include communications by telephone, telegraph and cable? Which penal provisions put into effect the prohibition against violating the privacy of communications? Were they absolute, or were there exceptions? What about protection of other kinds of communications? There seemed to be no express prohibition against the use of hidden microphones or electronic devices for interfering with communications.

If phone-tapping was permissible during a state of emergency, had it been done, and to what extent? he asked. As to freedom of expression -- which included the freedom to criticize -- he said that according to the Constitution, the expression of an opinion could not be considered a felony. If the opinion was critical, would that count as a felony?

He further queried whether Peruvians who published critical articles in foreign newspapers could be charged with betrayal of their country, as the relevant decree implied. To what extent was it permissible to be critical of those in power? he asked. Were the intelligence bureaus meant to protect State secrets; could they be used as censorship bureaus, and would they not impede the search for information allowed under freedom of information?

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Ms. HIGGINS, expert from the United Kingdom, inquired about the budget of the judiciary. She said the actual expenditures had not matched the amounts budgeted. She understood that the underpayment of judges made them susceptible to bribery. Why were budget provisions not being fulfilled?

She asked about tapping of telephones for political purposes. A recent report indicated that telephone taps had been placed on union leaders, candidates for office and reporters. Had there been any response by the Government to that report?

A Presidential decree, she said, had authorized certain powers of censorship in the interests of national security. It was coupled with a provision permitting access by the armed forces to the universities. Exactly what were the provisions of the decree?

Mr. PRADO VALLEJO, expert from Ecuador, said Peru had proposed a 50 per cent cut in military expenditures. Such savings from the military could be applied to the judiciary.

He went on to say military courts had assumed control of all jurisdictions. But they had rarely investigated military personnel violating the rights of individuals. The few cases that were brought to the courts were dismissed. Could the State act to prevent the military courts from ignoring the violations of human rights? Career army officers were presiding over the military courts. No legal trainig was required. Proceedings were conducted in secret, and the plaintiffs were excluded from the hearings. A court consisting of untrained personnel working in secret could hardly be expected to enforce the law.

Certain reported cases had been dealt with specifically by the Joint Command of the armed forces. He referred to a killing of seven detainees who had been stopped by an army patrol. Were the persons responsible brought to justice? In fact, the military tribunal had exonerated the accused. If the high command exonerates officers from all responsibility, what recourse did citizens have? Amnesty International had stated that it was unaware of any case where a member of the Peruvian armed forces had been judged guilty of violating human rights. How did those militrary tribunals operate? What procedures did they follow?

He asked if the right to strike had been restricted. A declaration had been issued on 14 November which had resulted in the rounding up of labour leaders. What was the outcome of that action? Five decrees in recent months had suspended free negotiations by workers. Had the rights of workers been taken away in those cases?

Replies by Peru

Ms. VARGAS, of the Peruvian Ministry of Justice, said there were only about 17,500 lawyers in Lima. As to the jurisdiction of lawyers, every

province was a judicial district, each of which had a bar affiliated with the national bar association. Civilians were subject only to civilian jurisdiction carried out by the judiciary.

She said the decree creating a system of national intelligence had been laid down by the Congress. Since 1991, 2 per cent of the budget had been allocated to the judiciary, meaning that an official of the higher court now received a monthly remuneration of about $1,000.

During states of emergency, she went on, the right to the inviolability of communications continued to prevail. There were only six exceptions allowed for in the Constitution. Telephone intervention was not permitted. Of course, there had been cases of such intervention, but once they were discovered the necessary measures had been taken to end them. It was not a crime to hold opinions critical of the Government, which fully guaranteed freedom of expression.

Appeals for habeas corpus could be heard by any judge, she continued. When a law was declared unconstitutional, it was repealed. The National Council of the Magistrature proposed nominations for judges to the President. No guarantee concerning the administration of justice had been derogated from during the states of emergency, except those specified by the Constitution in article 231.

Mr. LAZARO (Peru) said the Supreme Court resolved conflicts of jurisdiction between civilian and military courts. Members of the armed forces on active duty could not vote; those in retirement could not only vote but could even run for office. Freedom of the press was unrestricted. Some 37 members of the armed forces had been punished for violations of human rights.

Ms. VARGAS, of the Peruvian Ministry of Justice, said there was a specific office, the Organ of Internal Control that had the responsibility for investigating the conduct of judges.

Mr. PRADO VALLEJO, expert from Ecuador, said the national intelligence system was also part of one of the new decrees. Anyone refusing to give information to the system could be charged. Also, anyone who published material about it could be punished. What was the scope of the decrees relating to the national intelligence system?

The anti-terrorist law, he said, had made it possible to detain members of the press. What had happened in those cases thus far? Two directors of newspapers had been charged. What had occurred since those arrests?

Mr. LAZARO (Peru) said the decrees mentioned were under study or in the process of being repealed. No directors of newspapers, as mentioned, had been detained under any anti-terrorist law. One of the so-called directors was actually the unofficial spokesman for the Sendero Luminoso. He had been detained for inciting terrorism.

Ms. VARGAS said the Constitution did not provide for exile as a form of punishment.

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HUMAN RIGHTS COMMITTEE CONCLUDES EXAMINATION OF PERU'S REPORT; TAKES UP THIRD PERIODIC REPORT OF COLOMBIA

The Human Rights Committee this morning concluded consideration of the second periodic report of Peru, discussing the extent to which that country respected provisions of the International Covenant on Civil and Political Rights on non-discrimination, equality of the sexes and the rights of persons belonging to minorities. It decided to ask Peru to supplement the report, which it would consider at its next session.

Also this morning, the Committee began its examination of the third periodic report of Colombia, whose representatives described the "substantial changes" that had taken place in their country over the past two years, particularly since the lifting of the state of emergency on 4 July 1991. Reforms of the administration of justice, and of the Constitution, had been accompanied by relatively endemic and grave violence on the part of guerrilla groups, paramilitary "self-defence" groups and drug traffickers.

The Government representatives said the problem of disappearances was still of "a certain magnitude", but complaints had diminished. Police operations were fully under the control of civilian authorities. The Government had negotiated a political solution with members of four guerrilla groups in late 1991, and was presently negotiating with the two remaining active groups.

Questions on Peru's report were raised by the experts from Jordan, Hungary, Ecuador and Austria. Representatives of the Peruvian Government replied.

Speaking on human rights in Colombia were the experts from Costa Rica, Jordan, Cyprus and Nicaragua.

When the Committee meets again at 3 p.m. today, it will continue consideration of the report of Colombia.

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For information media—not an official record

Committee Work Programme

The Human Rights Committee met this morning to continue its consideration of the second periodic report of Peru on its compliance with the International Covenant on Civil and Political Rights. It will also take up the third periodic report of Colombia. Among the issues it is expected to focus on are Colombia's new Constitution; the impact of guerrilla warfare and drug trafficking; death squads; the existence of special judges; and the indigenous communities of the Amazon.

Report of Colombia

The Committee had before it the Colombia report (document CCPR/C/64/Add.3), according to which the country has been afflicted by politically motivated armed violence, while democratic institutions have been maintained. The Government acknowledges, however, that there have been "specific situations" in which some State agents "in isolated cases" have committed human rights violations contrary to Government policy. To deal with the situation, the Government has recently taken measures to restore to the judiciary its capacity for action, including strengthening the protection of court personnel, judges and judicial officials.

At the present time in Colombian society there are two main sources of violence: guerrilla warfare and drug trafficking, the report states. During the 1980s, attacks were made on judges, mayors, magistrates, governors, counsellors, ministers, public prosecutors and presidential candidates, while soldiers, policemen and innocent civilians were also killed. Emergency measures were resorted to in the context of the state of siege. However, the powers conferred in no circumstances extend to the suspension of the Constitution, which remains in force. The life, liberty and other legal attributes of the individual have always been guaranteed.

The state of siege currently in force was declared on 1 May 1984 on the basis of constant attacks on villages by armed groups, terrorist acts in the cities and the assassination of the Minister of Justice.

The report discusses the political and judicial checks on the exercise of the powers of the Government during a state of siege, stressing that justice would be the response to terrorism and subversion. The report goes on to state that the death penalty does not exist in Colombia and that the law penalizes abortion and euthanasia.

The report states that by law, individuals are allowed to do anything that they are not prohibited from doing. It further states that day after day Colombia is making every effort to "perfect its condition as a State subject to the rule of law". Given the current circumstances in the country, there are some restrictions on freedom of expression aimed at ensuring the protection of national security and public order.

The Government's instructions to all military detatchments stress the need to combat the agents of violence with the strictest respect for human

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rights, according to the report. One of the first measures to that end was the prohibition against the security bodies making detentions or house searches without the use of military uniforms. Last year the Government offered a significant reduction of sentence for anyone who had participated in paramilitary groups or had been guilty of offences related to drug trafficking who gave himself up to the system of justice and confessed his acts.

The report goes on to state that among the measures designed to change the country's political context was the encouragement given to the constitutional reform process. For the first time in 150 years, the Constitution would emanate from a body elected directly for that sole purpose -- the Constituent Assembly, convened in 1990. It was to have begun its work on 5 February 1991 and to have met over a period of six months, during which time the constitutional reforms would have been approved.

Elections to the National Constituent Assembly had been held in 1990 and had resulted in the popular election of 70 Colombians from the most diverse ideological tendencies and social groups; the list headed by the former guerrilla Antonio Navarro Wolf had won the greatest number of votes. The purpose of the elections was to open up greater democratic opportunities for all citizens, thus strengthening genuine participatory democracy. Related decrees had been issued with the aim of permitting the reintegration into society of offenders.

Abundant legislation has emerged in recent years to reinforce the rights set out in the Covenant, the report says. There are bodies to which the victims of the violations of any right may resort. In 1989, 1,086 military and police personnel were discharged for misconduct or convicted, and 250 such personnel were prosecuted and subject to the ordinary system of justice.

The report lists all the programmes carried out in 1989 and part of 1990 to provide education in human rights. It also notes the development of a policy designed to enhance the quality of life of peasant women and their families, and mentions projects being supported by the Government in the rural sector. "In Colombia, as in other third world countries", says the report, "women are faced with real problems such as generalized conflicts in some areas, guerrilla warfare, drug trafficking, difficult financial circumstances and other factors".

However, 46,000 community mothers have been trained; 49,784 welfare homes were created; information and education were provided to more than 1 million families; and more than 3,000 mothers were trained to prevent fatal diseases in children. The Office of the Presidential Adviser for Young People, Women and the Family had been established in 1990. On 1 March 1991 the new Minors' Code had come into force.

In recent years women have played an outstanding role in filling important public offices, according to the report; there were 1,613 female members of the national police and 504 members of the armed forces.

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During the previous administration, policy had consisted of reconciling economic growth with social development, based on the concept of a "social economy". Resources had been used to broaden access to basic public services, increase opportunities for generating income and promote programmes for enhancing family life. Certain public functions had been privatized, the industrial sector had been modernized and the internationalization of the had economy continued.

Unfortunately, says the report, there has been a resurgence of "slavery in our time" under new guises such as forced labour, traffic in persons, prostitution and child labour. There were real problems caused by a lack of basic materials at mental health centres, but mental health workers continue to look for more efficient and dignified methods of treating those illnesses. In addition, a new model penitentiary is planned as one alternative solution to such problems as overcrowding and the treatment of juvenile delinquents and female prisoners.

In recent years investment in health has risen at an average annual rate of 35.5 per cent. Attention was paid to the epidemiological emergency posed by the acquired immunodeficiency syndrome (AIDS) by means of a nationwide plan for prevention. In 1990 unemployment had fallen by 8.7 per cent in the major cities. The present Administration intends to promote the construction of nearly half a million housing units in the next four years. Regarding the operation of "organ banks", the law approves the use of usable anatomical components of a cadaver and regulates the donation of organs by living persons for immediate transplants.

The policy towards indigenous communities has in recent years been linked with environment policy through the regulation, protection, recovery and sustained development of natural resources, particularly tropical forests. Land reform programmes are designed to speed up the handing over of traditional lands in the form of reserves. During the last four years, as part of the ecosystem protection policy, 72 indigenous reserves have been set up.

Statements on Peru Report

PATRICIA VARGAS RODRIGUEZ, representative of the Ministry for Justice of Peru, said the Constitution had ruled there could be no social or political distinction based on sex. Peruvian women had risen in the social strata. Statistics had indicated that women were participating in political and private life. The Constitution guaranteed equal remuneration for men and women in the work place.

Aliens in Peru, she said, were not allowed to hold property along the borders. The higher ranks of the military were not open to aliens. National security had necessitated restrictions on aliens.

Child labour laws existed in Peru, she indicated. Minors were allowed in the workplace only according to conditions recognized by international standards. The work of minors was limited in number of work hours and working

conditions. The economic and social situation in Peru had required many minors to do work that was not in compliance with the international provisions. The Government was aware of the situation and was attempting to establish agencies and policies to protect minors who were working Currently an ad hoc committee was reviewing the code on minors.

She said legislation existed that protected the country's indigenous peoples, including their autonomy and their land. The traditions of the indigenous and the peasant communities were respected by the Government. Community cooperatives were encouraged. The lands of those people could not be seized.

JORGE LAZARO (Peru) said that peasant and indigenous communities were protected in the Peruvian Constitution. Agencies had been established to protect traditions and folklore. It was necessary to provide improved circumstances for development in those communities.

Ms. VARGAS said geographical and climate conditions impeded the development of the indigenous communities. Terrorist and drug activities had a profound effect on geographically isolated communities. The policy designed to insure social and political integration of the minority groups had not been as successful as hoped, but the Government was attempting to address the problem.

WALEED SADI, expert from Jordan, asked what was the percentage of women in the legislature and the judiciary and whether Peru had a problem with children involved in prostitution. Was there also a problem with trafficking in women and children for prostitution? What was the extent of the drug problem?

He asked if there was some form of affirmative action in Peru to integrate minorities, and what was the scope of the environmental protection policy, especially where indigenous people were living. Had their way of life been threatened by industrialization campaigns?

JANOS FODOR, expert from Hungary, said Peruvian law prohibited the employment of children under 14 years of age, but practice did not seem to correspond. More than 1 million Peruvian children under that age were reported to be working. He asked if any more recent figures were available and whether any progress had been made over the past five years.

In the gold mines of the Madre de Dios area, he continued, children were reported to be working under terrible conditions, almost like slaves. If that was true, was the Government prepared to do something about the situation?

JULIO PRADO VALLEJO, expert from Ecuador, said peasants in drug-producing areas of the Amazon region appeared to have a very serious problem because of the Sendero Luminoso and the Tupamaro, on the one hand, and the police and armed forces on the other. Sometimes the Sendero and the Tupamaro made pay-offs to the peasants who produced drugs, but the police and military were also guilty of abuses. The Government's attempts to change the type of crop

produced had not been successful. What were its present plans to help those peasants? he asked.

KURT HERNDL, expert from Austria, asked for statistics on what the Government was actually doing to improve the cultural life of minorities, as provided under the Constitution. He also wished to receive information on the integration of minorities into national life and their access to public office.

Mr. LAZARO (Peru) said that one of the main objectives of the Government was the organzation of the peasant communities to enable them to negotiate with businesses that wished to invest in alternative crops. The purpose would be to allow them to enter into legal contracts. Those communities were also being encouraged to organize themselves politically.

The problem of drugs in Peru was related to the problem of supply at the hemispheric level, he said. Responsibility for the problem was shared between producer and consumer countries. Statistics had shown that Peru was one of the least affected countries in terms of consumption. There was a drug problem among street children and projects had been initiated to house and care for them. A National Children's Foundation had been established by the President's wife to develop 10 projects to address children's problems. A successful experiment called "The Glass of Milk Programme" had made it possible for mothers to organize a project to feed children adequately.

Affirmative action did not exist in Peru, he said. It was felt that all Peruvians should have equal opportunity for employment. Occupational quotas had been opposed.

Indigenous communities and ethnic groups were respected in Peru, he said. Languages and traditions were preserved and taught in the schools. No group was forced to learn other languages. The expansion of modern life, however, often generated cultural shock, but that phenomenon did not reflect a Government policy. The States of the Amazon Group through the Amazon Pact had worked to guarantee respect for the indigenous peoples of the region.

Statistics on the number of working children were being updated, he indicated. The Foundation for Children was encouraging children to cease working and to attend school. No evidence had been found to indicate that children were being forced into slavery.

Ms. VARGAS, representing the Ministry for Justice of Peru, referred to existing laws stipulating crimes against the environment, public health, pollution and contagion. Many women were in Government posts, she pointed out. They held positions in the Chamber of Deputies and Senate. The rights of minorities were being organized in the various regions. Until regional councils were actually installed, the picture of minority participation in the Government would be incomplete.

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Following a suggestion by Mr. LAZARO, the Committee decided that Peru should submit within 15 or 20 days an addendum to the report that would include a more comprehensive narration and response to the concerns voiced. Further comments would be held over until the Committee's next session.

Introduction of Colombia's Report

JORGE ORLANDO MELO, Presidential Adviser on Rights of Colombia, introducing that country's third periodic report, said there had been substantial changes in Colombia since the report was submitted. The country had had one of the highest levels of economic development in Latin America during the past 25 years. Some 48 per cent of all university students were women, as was a very large proportion of the professors. Fundamental democratic indicators had also improved. In 20 years, the gross fertility rate had declined from seven children per mother to two, and the population growth rate had fallen from 3.5 per cent in 1970 to less than 2 per cent.

Those changes had been accompanied, however, by a rather difficult political process, with relatively endemic and grave violence, he continued. The 40-year-long guerrilla war, and the drug wars, had almost produced the collapse of the system. During the last four years efforts had been made to overcome the problems, including the development of a human rights policy that was as integrated as possible.

He stated that there had also been a fundamental change in the administration of justice, with the adoption of the "accusatory" system and the total reorganization of its functions to overcome a situation of impunity that had a serious impact on human rights. Impunity had created a lack of faith in the State's capacity to defend its citizens against guerrillas. Sometimes with the complicity of members of the Government, paramilitary "self-defence" groups had been formed which had exterminated persons they had thought to be guerrillas.

Subsequently, he went on, there had been substantial constitutional reforms, as well as the creation of a very strong machinery to make protection real instead of purely formal. There had also been a great change in the overall spirit of the Constitution through its recognition of the country's multicultural nature and the granting of full equality to racial and cultural minorities. The Constitution also provided great encouragement to the indigenous population, who were now represented by three senators and who constituted 2 per cent of the total population. Some 25 per cent of the national territory had been declared the inalienable property of indigenous communities.

He said Colombia had the only fully civilian cabinet in South America. It had lifted the state of emergency on 4 July 1991. There were new policies in place for strengthening the security forces, providing additional protection for judges and witnesses, and for dealing with the problem of disappearances. The Government had set up a system for the immediate follow-up of such cases of disappearances, which constituted a significant problem in the country.

Police operations were fully under the control of civilian authorities, without any dependence on the military, he continued. For the first time, the secret police was under the control of a person without military or police rank. Complaints of torture had diminished dramatically, while those about disappearances had also been reduced, as had the number of assassinations of political leaders. However, a certain level of generalized violence continued.

He said the Government had negotiated a political solution with members of four guerrilla groups in late 1991, and was presently negotiating with the two remaining active groups. It was willing to accept international monitoring of those agreements, and had made explicit its acceptance of dialogue. Most of the recommendations of the Working Group on Disappearances of the Commission on Human Rights had been put into effect.

MANUEL JOSE CEPEDA, Advisor to the President of Colombia on Constitutional Affairs, referred to the radical Constitutional changes in his country. The change had been initiated by institutional inability to deal with internal crises. The assassination of the Prosecutor General and the kidnapping of a political candidate in 1988 had precipitated a move to reform the Constitution. After the death of a presidential candidate, a student movement in 1990 had called for the convening of a Constituent Assembly. A referendum had been held in support of the convening of an Assembly to reform the Constitution.

The state of siege, he said, had been an instrument for political change. The President had subsequently taken up the process of Constitutional reform. A Constituent Assembly had been elected representing all groups, including minorities and indigenous peoples. The Assembly had produced a new Constitution in 1991. The state of siege had been lifted after the changes in the Constitution had been legitimized. The implications of the democratic changes in the nation were enormous.

A new balance had been created in the political process, he said. There was a new confidence that institutional reform could be carried out. The new Constitution was seen as a peace treaty among all conflicting groups in Colombia. It had, first of all, brought about a complete change in the judicial system, which had been designed to protect human rights. The Covenant was the source for those rights.

Effective legal machinery, he indicated, had been created to protect the new rights. All persons could have access to any judge in the country in seeking recourse. The new Constitutional Court had been used vigorously to protect the newly established rights.

He said the implementation of a state of siege was now limited by the new Constitution. The power of the President was limited in situations of threat to the public order. The power of the Congress had been increased to check the President's power in defining a situation of internal turmoil. Criteria had been established to control such authority. Although violence continued in the area of drug trafficking, the powers of the Government were limited in

order to protect individual rights. Judges had been empowered, as in the Constitutional Court, to ensure the respect of all rights guaranteed in the Constitution.

The Senate, he said, now had representation of the indigenous peoples. Provisions had been made for popular referendums and other forms of citizen participation in the Government. Regional and local democracy was being strengthened.

Colombia was a transformed State, he said. The efforts of the Government had been fruitful in implementing a new era of social justice. Violence and threats to human rights by drug traffickers were a remaining challenge to the Government.

Mr. CEPEDA (Colombia), answering questions posed earlier by experts on the constitutional and legal framework within which the Covenant is implemented, said the state of siege had been used to facilitate the reincorporation of armed guerrilla groups into civil life. Three such groups had participated in the elections.

The state of siege had also served for decreeing an amnesty for crimes perpetrated by those groups, and for protecting judges and witnesses from threats by drug traffickers, he continued. The legislative committee of the Constituent Assembly included representatives of indigenous communities and of the M-19 group.

As to the restriction of rights under the state of siege, he said that beginning in 1990 the Supreme Court had adopted rather restrictive jurisprudence by which some of the decrees promulgated during the state of siege had been deemed unconstitutional. The last state of siege had lasted only two days, but public services had continued.

Mr. MELO (Colombia) said the guerrillas operated in rural areas where the Government was gradually establishing a greater presence. Guerrilla warfare frequently led to retaliation by civilians, and there was a legal provision enabling the creation of armed civilian groups to carry out defensive activities under military protection. That was a dangerous provision, as many legally established groups had become independent of the State and worked illegally to control drug traffickers.

The basic forms of guerrilla warfare had been kidnapping for ransom and the protection racket, he went on. Beginning in 1989 measures had been adopted to try to deal with the human rights impact of that situation. The lowest estimates for 1991 were that 600 Colombians had been kidnapped by guerrillas for economic reasons. Landowners were selling their land because of that guerrilla activity, and the new owners were very accustomed to armed warfare and had tremendous resources generated by the international drug market. Frequently their weapons were better than those of the military, police or national guard.

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He said the process of negotiating with the guerrillas had reduced their direct participation in drug trafficking and had cut down on the number of retaliatory activities against those deemed to be associated with the guerrillas. Some 500 individuals had handed over their weapons, while others had disappeared within the rural community. The self-defence groups made illegal by the Government were being punished, and their impact was lessening. Illegal actions by security bodies were, however, difficult to monitor.

Discussion

FRANCISCO JOSE AGUILAR URBINA, expert from Costa Rica, excused himself from questioning based on his friendship with the individual members of the delegation of Colombia. He deferred his questions to other members of the Committee.

WALEED SADI, expert from Jordan, said he was impressed with the methods used to address the right of self-determination in the Constitution. He questioned whether the constitutional framework had incorporated the Covenant or merely used it as a source. He asked for the Government's position regarding the first two Protocols of the Geneva Convention as they applied to the ongoing internal conflict.

ANDREAS MAVROMMATIS, expert from Cyprus, inquired about the status of the prohibition of certain types of discrimination not enshrined in the new Constitution. Referring to "past excesses" of the Government during the period of internal conflict, he said measures had been taken to improve the situation, but the task remained complex and difficult. Necessity had created a large army with its own jurisdiction. When a country faced hostile forces within, such as guerrilla groups and drug traffickers, it was understandable that such an army should exist.

Effective investigation and follow-up of investigation of excesses by the military and police thus became an issue. The impunity of military and police personnel based upon a defence of "acting within the line of duty" created great difficulties for the Government in putting an end to violations of human rights.

ALEJANDRO SERRANO CALDERA, expert from Nicaragua, said the situation in Colombia could not be viewed simply though the prism of the judicial structure. Legal machinery should be mobilized in the country to protect human rights and to demonstrate political will on the part of the Government to address human rights issues.

A series of social actions and machinery had been implemented, he said. New economic policies had begun to address the underlying causes of past social conflict. A plan now seemed to exist to give civilian society stability and opportunities for development. Resources were being made available to the citizens to protect their rights. Sanctions, the right of petition, the right of habeas corpus were all examples of rights now available to the citizens. The effectiveness of the new machinery implementing those rights would have to stand the test of time.

He inquired what judicial place the Covenant held within the Constitutional structure. What status did it hold within constitutional or judicial law? Could any citizen seek recourse under the Constitution in court? What was the effect of the rulings of the Constitutional Court?

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United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-fourth Session
1137th Meeting (PM)

HR/CT/183
2 April 1992

HUMAN RIGHTS COMMITTEE EXPRESSES CONCERNS IN EXAMINING COLOMBIA'S REPORT ON IMPLEMENTATION OF CIVIL AND POLITICAL RIGHTS COVENANT

The impunity of the military and of drug traffickers, an increased murder rate and the actions of paramilitary groups in Colombia were among the concerns expressed this afternoon by the Human Rights Committee as it continued its consideration of that country's report on its compliance with the International Covenant on Civil and Political Rights.

The Committee, composed of 18 experts serving in their individual capacity, is charged with supervising implementation of the Covenant, which entered into force in 1976 and currently has 102 States parties.

The representatives of Colombia explained the steps their Government was taking to implement the Covenant, including investigation of "clean-up operations" by paramilitary groups. Those groups, they said, were difficult both to identify and to control; however, there was evidence of decreasing participation by the military in those groups. The number of sanctions imposed on members of the military for violating human rights had increased, and the heads of several drug-trafficking cartels had turned themselves in.

Statements were made by the experts from France, United Kingdom, Ecuador, Sweden and Egypt, who also asked about extrajudicial executions, military penal jurisdiction and the independence of the judiciary.

When the Committee meets again at 10 a.m. tomorrow, 3 April, it will continue its examination of Colombia's report.

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For information media—not an official record

Committee Work Programme

The Human Rights Committee met this afternoon to continue consideration of the third periodic report of Colombia on its implementation of the International Covenant on Civil and Political Rights. Issues of particular concern to Committee members include the new Constitution, the impact of guerrilla warfare and drug trafficking, and paramilitary groups. (For background on the report of Colombia (document CCPR/C/64/Add.3), see Press Release HR/CT/182.

Discussion

In the discussion on constitutional framework and state of emergency, CHRISTINE CHANET, expert from France, said that in the past, attacks on judges and other intimidation made judicial function nearly impossible. A great deal was expected of the new Constitution in creating a new condition of respect for human rights and a functioning judiciary to enforce those rights. She referred to the number of cases that had come before the Constitutional Court, and asked what evidence was necessary in court to demonstrate a citizen had been subjected to threats.

She questioned the impunity granted to the army. How did such impunity affect a citizen's ability to seek redress in the courts for a violation of rights? Although the rights of the accused were respected, major drug traffickers seemed to also enjoy impunity from prosecution, she observed. What judicial authority had been granted over the police? she asked.

ROSALYN HIGGINS, expert from the United Kingdom, said the issue of self-determination had been dealt with most effectively in the new Constitution. Democratic institutions, involvement of the population and efficacy of the electoral system were all areas addressed successfully. In that Constitution, she pointed out, the circumstances for a state of emergency could be challenged in the Supreme Court. However, it was unclear how human rights were to be treated in such a state of emergency. What rights could not be suspended? she asked.

What action had been taken as a follow-up to the adoption of the Optional Protocol? What responsibility had the Government taken in specific cases? Would the Government be willing to reconsider additional remedies available to individuals?

JULIO PRADO VALLEJO, expert from Ecuador, said democracy had been seriously threatened in Colombia by guerrilla forces and common criminal activities. It was difficult to govern in an atmosphere of generalized violence. Constitutional reforms and economic gains had been basic steps to guarantee human rights.

Most of the rights of the Covenant had been incorporated into the Constitution, he said. A generalized awareness of human rights was being created in Colombia. The report had made no attempt to hide the problems of violence that Colombia had faced. Efforts by the current Government to

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maintain peace had recently been successful. Some heads of drug trafficking organizations had been brought before the judiciary. Several revolutionary groups had decided to give up their arms and to live in peace.

Paramilitary groups were still active in Colombia, he continued, and drugs operators were often involved with them. The majority of them were members of the armed forces or linked to the armed forces. What had been the results of the efforts by the Government to disband the paramilitary groups? he asked. The taking of hostages and the capturing of farmers was still occurring.

The so-called clean-up operations to end all political opposition had been an ongoing concern, he said. Had the Government been able to curb the excesses of those operations which were often associated with the paramilitary groups? he asked. Over 600 military persons had been found to be involved with such activities. To date, only 60 of them had been brought to justice. Was it possible to disband those paramilitary groups? What measures could be taken by the Ministry of Defence?

He asked how habeas corpus functioned in the new legal system. In the areas controlled by the military or the paramilitary groups, sometimes detainees had not been brought before the proper judicial authorities, he said. It appeared that there were some restrictions on access by attorneys to detainees. The Committee had been informed that sometimes the military had obstructed access to detained persons.

BERTIL WENNERGREN, expert from Sweden, said the issue of impunity was the root of much evil. To fight it, a good judiciary was needed, as well as a good judicial police and good prosecutors, acting with objectivity, impartiality and resoluteness. What were the guarantees for those conditions? he asked.

He said he was also concerned about military personnel, and wondered if there were military police, military prosecutors and military courts to investigate any crimes they committed, such as torture, killing innocent people or abusing their positions. What guarantees were there of the objectivity, impartiality and resoluteness of those police, prosecutors and courts? he asked.

JORGE ORLANDO MELO (Colombia) said the Covenant had a supralegal rank, intermediate between the law and the Constitution. The Government was trying to adapt existing legislation to the Covenant, including laws on states of emergency and direct participation in decision-making, to eliminate any incompatibility.

The Constitution would be translated into more than 12 indigenous languages, he went on. It must be used to deal with injustice and arbitrary acts. It had also been inspired by a spirit of equality that protected political minorities. Some electoral machineries had been established to facilitate access by minorities to power.

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The Constitution explicitly stipulated that there should be a committee to study the situation of black communities in Colombia, he continued. Those communities must be represented on the committee. It also specifically prohibited discrimination of all forms and established wide-ranging powers to ensure affirmative action for all individuals.

Military penal jurisdiction, he said, could be applied only if the military personnel had committed the pertinent act while in service. There had also been a change in the rule on the role of the military, with the appointment of a Minister of Civil Defence. Tradition held that such ministers should be members of the military, but this time the Minister was a civilian, subject to motions of censure by the Congress and with far larger political responsibility. He could promote constitutional provisions dealing with the training of military staff members to strengthen the civilian governance of public order and ensure that the military was more democratic.

MANUEL JOSE CEPEDA (Colombia), Adviser to the President on Constitutional Affairs, said the Colombian army was small by international standards. For 40 years it had had to deal with a significant and serious threat. It had not become the force in society that some had suggested. The Colombian army could no longer take judicial action against civilians, nor could it investigate or judge civilians under the new Constitution.

The Attorney General, he said, had reported on human rights violations by members of the military, and had called for the resignations of certain military persons. The number of cases that had not been resolved did not indicate that any impunity existed in the military. The sanctions imposed on the military had increased. Generally, the crimes of kidnapping, homicide and torture could now be investigated through traditional judicial means.

Identification of the paramilitary groups was difficult, he said. In the past, the majority had been members of the armed forces. Those groups had been legal from 1986 to 1988, but that was no longer the case, and the evidence of military participation had decreased. Whenever military persons were found to be involved, the Government had taken action.

The so-called clean-up operations by paramilitary groups had been primarily urban, he said, and often involved persons engaged in drug trafficking. Investigations had revealed that guerrilla groups had often attacked criminal figures in order to gain popular support. Police agents, in frustration over judicial actions, had also, on occasion, joined such clean-up operations. Such cases were now being investigated. The Government had a responsibility to stop paramilitary groups from carrying out such operations.

Incidents of rural massacres by paramilitary groups had decreased, he said. Two reported incidents had been investigated in the past year. One appeared to be the result of an illegal execution of innocent persons and the investigation was continuing. Such groups often existed in rural areas and were difficult to control. The failure to report such activities had made action by the Government very inefficient. Efforts were under way to have the army take control of such areas to stop such groups.

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Mr. MELO (Colombia) said that any Colombian citizen aged 18 years or older could bring a public action of unconstitutionality before the Constitutional Court or Constitutional Council. Any provisions found unconstitutional were then declared null and void. There had been 150 such actions per year. Public actions of that sort extended to all the new provisions of the Constitution. They applied both to collective and to individual rights, and they made it possible for the new Constitution to be effective in all areas of law.

If it was felt that a court's ruling involved a violation of the Constitution, he said, an action of tutela could be raised against that court, and the Constitutional Court would be the ultimate arbiter of jurisprudence in the area of the protection of basic rights.

Tutela was a very innovative tool for fighting arbitrary judgements, he went on. It could be interposed by any individual who felt vulnerable or threatened with regard to basic civil, political or economic rights, or by a public defender or municipal authorities. Alternatively, any judge in the republic could be asked to review a specific case, and a decision was required within 10 days.

He stated that the rules tended to "privilege" the person who had come forward with a report of the violation or abuse of their rights. Individuals could appear without an attorney, and the accusation could be refuted by the accused party. If no response was received within three days, it was presumed that the accusation was founded. Once it had been established that a right had been violated, without waiting for the three days, the judge could order any measure deemed necessary to end the violation, including suspending the specific application of any legal norm in force.

At the end of 10 days, he went on, a judgement was handed down. All tutela judgements relating to constitutional law and conflicts of jurisdiction were sent to the Constitutional Court for review. There had been more than 1,700 cases of tutela protection since the measure came into effect last year.

With regard to organized crime, he said several major capos (heads) had turned themselves in and would have their sentences reduced if they cooperated. Sufficient evidence had been found that linked the major capos to crimes that had traditionally gone unpunished. Some of the leaders of the Medellin cartel had been linked to the assassination of a leading Colombian journalist.

Much had been done to protect judges, ranging from the establishment of a 3,600-person protection team to the holding of training seminars for judges and their security guards, he continued. More than 1,000 people had been trained, thanks to funds from the sale of drug trafficking products and to $900,000 recently given by the United States Government for that purpose. Judges had been centralized in five cities to facilitate their protection.

Even more effective, he said, was their anonymity, which was ensured by the fact that judges responsible for cases were not known by the parties or by the defence lawyers. Their anonymity was guaranteed by staff, but they still

had to sign the sentences, which were kept in secret places. Evidence could be disputed only when the life of the witness was at stake.

He said it was a very difficult problem to strike a balance between fighting organized crime and guaranteeing rights. Risks of abuse had generally not materialized, however.

Mr. CEPEDA (Colombia) said his delegation would provide information tomorrow regarding cases involving the Optional Protocol.

Mr. MELO (Colombia) said the Constitution prohibited the suspension of human rights or fundamental freedoms. If, for any reason, the army determined that an extreme threat to public order existed, specific rights could be limited, relating to the restoration of public order. There could not be a generic suspension.

Concerning the right to life and the right to fair trial, Mr. CEPEDA (Colombia) said that lower-ranking officials of the military often felt they had the right to take illegal actions. Problems of disappearance still existed. In Colombia, disappearance was often not a case of a person being illegally detained; generally, it was the result of a homicide or an assassination. Such investigations were very difficult, when there was no indication of the fate of the reported victim. Comprehensive machinery now existed to follow-up on reports of disappearance.

There were many unidentified corpses in Colombia, he said. The judicial system could now provide information at the national level to allow those corpses to be identified.

Many of the new sections of the penal code had limited the possibility of such crimes as torture, he said. New decrees reduced preventive detention to five days in civilian custody and to 24 hours in military custody. The civilian code had now unified the time period to 36 hours as a maximum for preventive detention. The Government had invited the International Committee of the Red Cross (ICRC) to have access to all the places of detention, such as police installations and military bases. The ICRC had found no undue difficulties in gaining access to the facilities.

Restricting the number of firearms in the hands of the public was an element in reducing violence, he said. It was legal to bear arms if one had a licence. A programme to reduce the volume of firearms in the hands of individuals and to reduce the number of licences was under way.

The infant mortality rate in Colombia had declined to 36 per thousand, approximating the rate in many European countries, he said. However, it had been more difficult to achieve such results for the indigenous peoples. Access to health programmes in the extreme rural areas was difficult. Infant mortality rates of over 50 per thousand existed in such places. It was difficult to obtain statistics for indigenous and ethnic groups in the rural locations.

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Mr. MELO (Colombia) said judges could be removed through a special disciplinary tribunal, which was now being replaced by a superior council of magistrates mandated to deal with all aspects of administering the careers and disciplining of judges. There was also an attorney's office that governed aspects of the independence of judges and could request disciplinary trials.

OMRAN EL SHAFEI, expert from Egypt, said the Government was to be congratulated for the success it had achieved thus far. According to some reports, however, the mechanisms for protecting the right to life and other human rights were not effective. There had been 24,267 homicides in 1990, and 25,582 in 1991; 313 confirmed political killings took place in 1990, and there were 1,694 presumably politically motivated killings. As of October 1991, those figures were 398 and 1,029, respectively.

What role did those mechanisms play in preventing murder and prosecuting the murderers? he asked. What did they do to protect an individual's right to life, given the fact that there were so many murders in Colombia? What steps had the Government taken to prevent and control extrajudicial executions by the police and by the military? What procedures did it follow against those bodies when citizens complained of such executions? Had any members of the police or the military been arrested or tried for such executions?

He also asked what steps had been taken to stop mass murders carried out by the paramilitary groups, and whether any members of the military had been arrested or tried for such murders. What efforts did the Government make to investigate and prosecute members of the military when no individual complaints were filed?

In addition, he asked what measures had been taken to investigate cases of torture? Had any safeguards been implemented to ensure there was no torture in prisons or detention facilities? Would the Government allow attorneys to be present during the questioning of a subject prior to criminal proceedings? Did subjects have the right to remain silent during an interrogation? How many public officials had been prosecuted for the use of torture in recent years? Were there mechanisms for members of the Government or the police to report incidents of torture they had witnessed; were they obligated to do so, and what incentives were they given to do so?

Ms. CHANET, expert from France, inquired about the time period of 36 hours for preventive custody. Was that time period the same when the anti-terrorist law of 1990 was applied? Could it be suspended in a state of emergency? Was there a system of administrative detention? What was the average duration of detention before trial in Colombia? Was all preventive detention carried out in specifically identified places. Could the judges monitor those places of detention? Could there be detention incommunicado? What medical care was provided?

Mr. PRADO VALLEJO, expert from Ecuador, referring to the right of security of persons from rural areas, said various displaced persons in the country had moved from those areas to the cities. Often they came out of areas under military control. What programmes existed to help those displaced

persons? And what had been the results of such programmes that had been adopted? Had peaceful dialogue with guerrilla forces alleviated the plight of such displaced persons?

Mr. CEPEDA (Colombia) referred to questions on crimes of torture, disappearance and execution carried out by military forces. He said attorneys could always visit detained persons. Measures had been taken to ensure access to all detained persons. Those policies had reduced the number of complaints in the past year. Complaints of torture in places of detention were virtually non-existent at present. The only complaints now concerned incidents of torture in the period between apprehension and detention. Specific cases were now investigated at a high level. They were subjected to an administrative investigation and a penal investigation. The jurisdiction applied to military persons as well.

With the new Constitution, he stated, actions committed outside of military orders by military personnel could be better identified and prosecuted. More than 200 police agents had been removed from service in recent months for human rights violations in administrative actions.

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United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-fourth Session
1138th Meeting (AM)

HR/CT/184
3 April 1992

COLOMBIA REPLIES TO QUESTIONS RAISED IN HUMAN RIGHTS COMMITTEE

Tells Committee that Attacks on Journalists and Others Have Subsided

Representatives of Colombia this morning told the Human Rights Committee that although there was still a "high level of social violence" in their country, violence against journalists, trade unionists and teachers had declined considerably, as had reports of torture, disappearances and mass murders.

The Colombian Government, they said, had established a number of human rights institutions which followed up on complaints of violations, dealt with acts of violence against families and children, negotiated with guerrilla groups and investigated cases of murder or torture involving the police or military. In the past three years a significant number of military cases had resulted in convictions.

The experts from Hungary, Japan, Egypt, Sweden, the United Kingdom and Yugoslavia asked questions about freedom of movement, non-discrimination, gender equality and minority rights in Colombia, as well as on the reported conflict between indigenous communities and Colombian blacks. The discussion was part of the Committee's consideration of that country's third periodic report on its implementation of the International Covenant on Civil and Political Rights.

When it meets again at 3 p.m. today, the Committee will continue its consideration of the report of Colombia.

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For information media—not an official record

Committee Work Programme

The Human Rights Committee met this morning to continue consideration of the third periodic report of Colombia on its implementation of the International Covenant on Civil and Political Rights. The implementation by Colombia of the rights to life and to a fair trial, as well as freedom of movement, expression and assembly is being taken up by the Committee of 18 experts. Rights of minorities and issues of non-discrimination will also be discussed.

Right to Life, to Fair Trial

JORGE ORLANDO MELO, adviser to the President on Constitutional Affairs of Colombia, said Government institutions existed to develop human rights policies. The Chancery for the Protection and Promotion of Human Rights was empowered to receive complaints of violations of human rights and follow up on such complaints. It had a computerized registry representing 5,000 ongoing investigations. The Chancery did not investigate directly; instead, it conducted follow-up inquiries. Educational programmes were also a function of that office.

The Office for Young People and the Family had been set up, he said, to deal with acts of violence against families and children. The Office for Rehabilitation (Office for Peace) was responsible for negotiations with guerrilla groups. The Attorney-General's office investigated members of the police force or military who had been involved in independent acts of murder or torture. As a civilian branch of government, it had access to all records necessary to pursue investigations. It had the right to monitor judicial impartiality and had the power of sanction over the police. The Defender of the State was a new entity with much broader powers. Designated by the Congress, it was independent from the administrative branch and could take action on violations of human rights. It also provided legal aid for poor persons.

Investigations of independent acts by members of the military and police involving mass murder and torture were carried out by civilian authorities. If an act were carried out by a member of the armed forces while on duty, it would be prosecuted by a military court, he continued. The military courts were required by the Constitution to comply with civilian standards and to hold a public trial. In the past three years a significant number of military cases had gone to trial and resulted in convictions. The proportion of the sentences handed down under military courts was much greater than those handed down under civilian jursidiction.

Actions taken to reduce political homicides, mass murders, and torture had been very encouraging, he said. Reports of torture had decreased by 80 per cent. Reports on disappearances had decreased by 68 percent. Reports of mass murders by military forces had decreased as well. Acts of paramilitary groups had declined in frequency. The recent elections were not accompanied by as many acts of violence and intimidation as had occurred in

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past years. All political parties, including the Popular Liberation Army and the Communist Party had participated in the election. Members of the popular liberation army had suffered some 15 homicides in those elections.

The problem of internally displaced persons, he said, had decreased in the last decade. The rate of growth in the cities had slowed. The areas still subjected to armed conflicts were experiencing severe economic disruption. The loss of crops and livestock had led to high levels of unemployment and displacement in rural regions. Guerrilla and military actions in certain of those regions had caused persons to seek refuge in the safer cities. Emergency aid was being made available to such displaced persons by a number of non-governmental organizations. Other programmes were being set up to protect the human rights of displaced persons.

Freedom of Movement, Right to Privacy

MANUEL JOSE CEPEDA (Colombia) said legislation on the right to privacy had taken a great step forward. The Constitution prohibited officials other than judges from ordering the interception of correspondence or telephone communications in order to acquire evidence. There had been specific actions to protect those human rights, similar to writs in Anglo-Saxon law.

The Constitution dealt specifically with the collection and use of personal data, he went on. Under the provision on habeas data, the individual was entitled to know about, and have access to, information that was an invasion of his privacy, especially in the case of debt. That applied both to public and private databases. Special writs had also been used with respect to computer reports and records used to harm individuals' credit standing.

As to whether the Roman Catholic Church enjoyed privileged treatment as compared with other churches or religious groups, he said a great change had occurred in that regard, constitutionally speaking. In the previous Constitution there had been a total void as to the protection of religious minorities, and instead it had provided special protection for the Catholic majority, through an agreement with the Holy See. The new Constitution sought rather to protect religious minorities.

The agreement with the Holy See was being renegotiated, he continued, to bring it in line with the new Constitution. The previous agreement laid down that all Catholic weddings had civil components, which meant that people who were married by the Church did not have to be married before a civil authority. That was now considered discriminatory, and the new Constitution specifically placed all religious denominations on an equal footing whereby all religious weddings had a civil component.

In theory, he said, minors had the right to receive religious instruction in school, depending on their parents, but in practice there were cases where that freedom had not been respected, and the question was under review by the Constitutional court.

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There had been a big void in Colombia with regard to participation in popular referendums, as the previous Constitution had enabled only popular municipal consultations to be held, he said. Municipal referendums had not numbered more than 10. Once the constitutional process got under way, however, people's interest in participating directly in decision-making had gained momentum.

In fact, that process had itself been the result of direct participation by citizens: There had been two direct votes on the Constituent Assembly, the first to decide to convene it and the second to decide on its nature. The new Constitution was very generous, he went on to say, granting all forms of participation at the departmental, local and national levels.

JANOS FODOR, expert from Hungary, asked whether the law guaranteeing the privacy of the home was duly respected in remote areas of the country, and by what mechanism it was enforced. Were judges free to decide to authorize phone-tapping and interception of correspondence, or was their discretion limited by law? he asked.

He also asked for details on the provision for up to five representatives in the House of Representatives of ethnic groups, political minorities and Colombians residing abroad, as well as the provision for a special electoral district. Had such a district been established during the last election?

Did the representatives of ethnic groups represent all ethnic groups in Colombia, or only the major groups of indigenous peoples? he asked. Of the five representatives envisaged, how many represented the ethnic groups? Which political minorities were meant by the provision? What mechanism was applicable to voting by Colombians who resided abroad?

NISUKE ANDO, expert from Japan, asked if there were de facto limitations on the broad freedom of expression and association guaranteed by the law, due to threats from guerrilla groups and drug traffickers. Was any particular effort being exerted by the Government to protect those rights?

OMRAN EL SHAFEI, expert from Egypt, said the Committee on Freedom of Association had expressed deep concern over allegations involving the violent death and disappearance of almost 200 trade union leaders and trade unionists since 1986. Also, he wished to know what the requirements were for registration and approval of an organization?

How were trade unions' rights to collective bargaining guaranteed? he asked. What redress was available for violation of those rights? What actions had the Government taken about allegations of violations of the right to collective bargaining? He also wondered what the Government had done about the numerous killings and disappearances of trade unionists, and to punish those responsible for the violence against trade union members.

BERTIL WENNERGREN, expert from Sweden, said that he understood that all radio and television stations were State-owned. There were controls placed on the contents of programming that could be deemed as undermining respect for

legitimate authority. Was that not a form of censorship? How would that effect those who wished to express opinions critical of the Government?

He also inquired about film censorship. All films had to be approved by a Government Committee. What were the requirements for such approval? What prohibitions were placed on films reviewed by the Committee?

ROSALYN HIGGINS, expert from the United Kingdom, said that a bill concerning states of emergency was introduced in January which included certain restrictions on freedom of movement. Had the bill become law? Did it contain limitations on constitutional rights? What was its position on the freedom of movement for journalists? The bill described types of passes to be issued during a state of emergency? Who would determine the issuance of such passes?

VOJIN DIMITRIJEVIC, expert from Yugoslavia, inquired about freedom of religion. As a part of depriving the Catholic Church of its past privileged position, the new Constitution treated all religions equally. The State would now recognize marriages consecrated under all churches. What powers were given to the Government to examine the conditions of marriages? What limitations were placed upon religions that were not considered morally acceptable to the State?

The freedom of religious instruction was a right granted to all parents, he said. What were the difficulties alluded to by the delegation in carrying out that right? What was in fact the choice available to those who did not choose a Catholic school or Catholic instruction? Was instruction in other religions available to all?

Mr. CEPEDA (Colombia) said the authority that carried out the registering of marriages had no power to judge the conditions of the marriage. It was merely a registry of the marriages and not a moral interpreter. There were two recourses -- one of judicial writ, the other legislative -- that might be considered to ensure that no marriage could be denied registry under any circumstances.

Private schools could be established, he continued, to promote any religion. In the public schools, there was a constitutional prohibition against forced religious instruction. Courses in religious ethics could be substituted for Catholic instruction. There was full freedom for the parent to choose.

In Colombia, he said, all political parties had free access to television. They were all free to criticize the Government. A draft bill was before the Congress that sought to change the administration of television. Progress was being made in the privatization of television. The goal was complete privatization and a guarantee of autonomy and access. Radio had the same range of complete freedom. Information and opinion programmes existed that even carried uncensored statements by guerrilla groups. A film classification committee, he said, could not censor films, it could only classify films for a specific audience. Only films that incited violence

could be kept from being viewed. "The Last Temptation of Christ" was the only case of a film being withheld. There was concern that the film could cause violence among the viewers. Under the new Constitution the right of tutela -- the right of individuals to petition over the violation of rights -- could even allow the showing of such a film.

He outlined the new electoral system that allowed Colombians living abroad to vote. The system was also designed to favour minorities and encourage indigenous peoples by promoting proportional representation in the Congress.

The bill regulating freedom of movement, in emergency situations had not yet become law, he said. Its adoption was expected in July, but only wars abroad would be considered as sufficient cause to impose such a state of emergency. Journalists were given great freedoms in Colombia and even their physical safety was protected by law.

Mr. MELO (Colombia) said the Constitution had changed the legislation which prohibited strikes in public services. It now prohibited only strikes in public defence areas and essential public services as defined by law. The executive branch had lost its competence to define "public services".

He said in the past six or seven years there had been a serious attempt to intimidate the Colombian press and force it to take positions and not mention particular activities, usually concerned with drugs. There had generally not been a problem with the expression of political opinions, however.

Newspapers such as El Espectador, however, which had had a defiant attitude to drug trafficking, had been the victim of successive assaults. A number of other journalists had been abducted and assassinated. Such incidents had nearly ended, however, due to security measures, and those responsible had been arrested. The practice of journalism in Colombia had required heroism, but the situation had changed rapidly. Even so, drug trafficking had never affected the independence of the mass media.

In the case of trade unions, the situation had been similar, he went on; many trade unionists had fallen victim to assassinations, primarily between 1986 and 1990, in areas of high social conflict where the unions had used strikes to deal with problematic labour situations. Reliance on the armed services of guerrilla groups had resulted in a situation over which the State had very little control. Unionists were one group where there had been a great number of people killed.

He stated that teachers, who in some communities also provided social or political guidance, frequently had confrontations with forces of the extreme right linked to drug trafficking. Those forces frequently enjoyed the cooperation of local civilian or military authorities in illegal actions against political opponents.

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None the less, he continued, Government measures had yielded results: The violence against unions had dropped substantially; investigations had shed light on some cases; the detention of drug lords had resulted in a lesser number of union victims, which could have political implications. There was, however, a high level of social violence in Colombia: in Medellín last year, for example, 25 State teachers had died, most of them as a result of delinquent gangs.

He said those teachers were victims of the random violence that affected nearly all sectors of Colombian life. A programme now under way enabled teachers to be transferred if they were threatened, and over 200 teachers had benefited over the past two years, most of them proceeding to live in peace.

Threatened union members had also been given special protection -- armed or otherwise, he said. The acquisition of defensive weapons had been approved in some cases for union leaders, even though it went against the general trend of reducing the level of arms among the civilian population.

Non-Discrimination and Minority Rights

Mr. CEPEDA (Colombia) said the Constitution guaranteed all cultures equal status under the law. Languages and dialects were recognized as official in their respective territories. A problem existed in trying to include mono-lingual persons in the political process. Bi-lingual education had been introduced to address that issue.

The Constitution, due to the representation of indigenous peoples in the legislature, was protective without being paternalistic. Indigenous regions were recognized as autonomous territories. Funds were allocated for those regions and administered by the members of each autonomous community. Collective ownership of property in those indigenous territories was recognized. Property of archeological value was recognized and protected. Education was encouraged that developed the cultural identity of the indigenous groups and minorities.

The Territorial Commission had been established, he said, with representatives of the indigenous groups to administer those territories. The right to a healthy environment was constitutionally guaranteed for indigenous regions. Decisions affecting the environment had to respect the wishes of the regions. Endangered animal species were protected.

Mr. MELO (Colombia) said the importing of toxic wastes was prohibited in the territories of Colombia. Parts of the Amazon region had been brought under Constitutional protection and more than half of it had been designated as preserves.

The transformation of women in society, he said, had been recent and revolutionary. Social programmes were now giving women greater access to educational possibilities. Income for women was still considerably lower than for men. In the latest elections many more women had been elected to political positions. Health conditions, particularly in the area of family

planning, had improved for women. A 3.4 per cent growth rate in population had decreased to 1.9 per cent in the past 10 years. Domestic violence still remained a problem for women and children in Colombia. Programmes for food supplements had been introduced in schools.

The Constitution, he said, provided special protection measures for children. All state health institutions were required to provide treatment for children under one year of age. Children found in violation of penal norms must be housed in special re-education institutions and not in penal institutions.

In Colombia, as in all third world countries, there was a problem of child labour, he said. Education was obligatory until the age of 14. At present the state norms were being adjusted to deal with the child labour problems. The Government had established mechanisms to address the issue of child prostitution.

Ms. HIGGINS, expert from United Kingdom, inquired about the tensions existing between the black community and the indigenous population. The ability to show ancestral rights of land concerned the black population. The indigenous peoples could protect land ownership from commercial development through proof of ancestral rights. Members of the black community feared that they would be driven from their lands in the absence of such ancestral claims.

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United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-fourth Session
1139th Meeting (PM)

HR/CT/185
3 April 1992

HUMAN RIGHTS COMMITTEE, CONCLUDING EXAMINATION OF COLOMBIA'S REPORT, CALLS ON GOVERNMENT TO END IMPUNITY

Lack of Investigations of Grave Crimes, Failure of Judiciary And Civilian Government to Function Effectively among Concerns Expressed

The Human Rights Committee this afternoon, concluding its examination of Colombia's third periodic report on its compliance with the International Covenant on Civil and Political Rights, praised the Government for many of its efforts but urged it to put an end to impunity -- a central element in the insecurity and terror afflicting many Colombians.

The absence of investigations of sometimes grave crimes, the failure of the judicial system to function with real effect and the inability of the civilian Government to take appropriate action to end the situation were among the concerns expressed by the Committee in its concluding observations.

The discussion this afternoon also centred on the problems faced by Colombia's indigenous peoples and black groups, as well as on the need to protect street children and to regulate the foreign adoption of minors, the sale of children's organs and child labour.

Statements were made by the experts from Nicaragua, Ecuador, Japan, Sweden, Cyprus, Egypt, Hungary, France, Japan, United Kingdom and Yugoslavia. The Chairman -- the expert from Italy -- said in a concluding statement that the frankness of the delegation from Colombia was greatly appreciated.

The representatives of Colombia answered questions, asserting that while the law respected the customs of indigenous peoples, their right to autonomy could not prevail over basic human rights. They agreed that the country's main problem was still that of impunity.

Also this afternoon, the Committee adopted a general comment on article 7 of the Covenant, on torture and degrading treatment, as orally revised. The debate focused on language concerning detention and amnesty for acts of torture.

The 18-member Committee, which has been meeting since 23 March, is charged with monitoring implementation of the Covenant by States parties.

When the Committee meets again at 10 a.m. on Monday, 6 April, it will consider actions taken by the General Assembly at its 1991 session, the World Conference on Human Rights (1993), submission of reports, organizational and other matters.

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For information media--not an official record

Committee Work Programme

The Human Rights Committee met this afternoon to continue its examination of the third periodic report of Colombia on its implementation of the International Covenant on Civil and Political Rights. The Committee will consider issues concerning non-discrimination and minority rights.

Experts' Queries on Colombia's Report

ALEJANDRO SERRANO CALDERA, expert from Nicaragua, referred to the protection of indigenous property. Was that property collectively or individually owned? Did the indigenous peoples have any permanent parliamentary representation as ethnic groups?

He asked about the specific characteristics of the codes of law for minors as they applied to indigenous peoples. What were the educational opportunities promoted for minors to counter the child labour problem?

JULIO PRADO VALLEJO, expert from Ecuador, said there were problems in many Latin American countries resulting from foreign adoption of minors. In many cases those children were not only abducted for adoption, they were abducted for use as organ donors.

He inquired about the system of popular assemblies that had been set up. What results had been derived from that consultative process?

He asked what mechanisms were available to indigenous people in choosing their own representatives. Could they elect directly their own authorities? How could a minority community choose the development project to be implemented in their region?

Oil exploration was a huge problem in some areas, he said. What problems had been encountered in achieving a balance between economic and ecological concerns?

NISUKE ANDO, expert from Japan, asked whether wives in Colombia had any legal standing as far as matrimonial property was concerned, and what the status was of indigenous women.

BERTIL WENNERGREN, expert from Sweden, asked what the strategy was for solving the growing problem of street children.

MANUEL JOSE CEPEDA, Presidential Adviser for Constitutional Affairs of Colombia, said the Constitution provided that the communal lands of black groups were inalienable and must remain intact. That did not represent as much protection as for the indigenous groups, but the conditions of each group were quite different. The indigenous groups already had representatives of their own and more progress had made with regard to them.

The fuero indígena was a special form of legislation protecting the native population, he said. In penal matters, it was deemed that there were

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certain offences with which indigenous people could not be charged because their traditions did not consider those acts worthy of reproach.

As for property in the Amazon region, he said ownership was collective or communal by virtue of the Constitution. There were two indigenous senators in the Parliament, elected by a special constituency, and discussion was under way as to whether there should be a third. There was also an equivalent number of representatives in the House of Representatives, although the special constituency had not entered into force at the time of the elections to the House.

The new Constitution abundantly protected minors, he continued; it prohibited their mistreatment and provided for the education of minors to 14 or 15 years. Two referendums had been held, involving nationwide voting. The state of inequality with regard to matrimonial property did not exist in Colombia.

The Government, he went on, had foreseen difficulties in reconciling equality between the sexes with the autonomy of indigenous peoples, since their customs were respected by the law, but the law did not allow for any discrimination by virtue of sex. There had not been any definite cases, however, where a conflict had actually arisen.

JORGE ORLANDO MELO, Adviser to the President of Colombia, said care had been taken not to allow the national law to intrude upon the indigenous community. The new Minors' Code, for example, required a judge to consider the local customs of indigenous peoples when handling a case involving a minor.

Indigenous minors, he stated, could only be put up for adoption when they were abandoned outside their community. Even in those cases attempts would be made to reintegrate the child into that community. The higher interests of the child were weighed against the customs of the indigenous community. The Code supplied a series of actions to be taken in cases of children being abused by parents. Adoption proceedings were changed in the new Minors' Code, and administrative methods of adoption were placed under review. No prior consent to adoption, for example, could be granted before the birth of a child. None the less, illegal adoptions did still exist.

Two years ago in Colombia there were reports of a practice of trafficking in childrens' organs. Those reports were investigated and found to be false. More recently, new reports had surfaced. It was still not possible to identify any real cases of such trafficking.

Educational access, he said, was guaranteed in the new Constitution. The rate of illiteracy in Colombia had dropped to 12.5 percent in the past year. The National Development Plan which had been funded aimed to provide school facilities for all children by 1995. The problem of street children was less visible now. The lowered birth rate and the improved economic condition of women had bettered the situation. Adoption of abandoned children and availability of institutional alternatives had also contributed to a reduction

of the problem. Various private groups, such as churches, had contracted with the State to aid street children.

The indigenous community as a political body was registered as a kind of guild, he said, to provide official information on the existence of such a group. The group could then choose its own leaders. Indigenous peoples were guaranteed control over their own development plans. The national budget supplied funds for the groups to implement their own development plans. Consultation with the indigenous groups was necessary to pursue a national development goal such as the extraction of a particular mineral from their soil.

Most oil fields, he said, were not located in the Amazon region. The problems of oil spills had occurred in certain areas where guerrilla groups had attacked oil facilities.

ANDREAS V. MAVROMMATIS, expert from Cyprus, asked if the Government could ensure that certain rights under the Covenant were not denied by recognizing the autonomy of indigenous groups. An example of such a conflict might be in the existence of an indigenous custom that subjugated women.

Mr. MELO (Colombia) said customs of indigenous peoples would not be allowed to overtly affect basic human rights such as the protection of the life of a child in a controversy over medical treatment. The right of autonomy could not prevail over basic human rights.

Concluding Remarks by Experts

Mr. PRADO VALLEJO, expert from Ecuador, said the existence of paramilitary groups was the most sensitive human rights issue in Colombia, as it was related to other abuses. Violence had been unleashed, directly or indirectly, sometimes by members of the armed forces. The guilty must be identified and punished.

OMRAN EL SHAFEI, expert from Egypt, said the enforcement of human rights in Colombia, and the strengthening of institutions for their defence, had been one of the Government's ongoing concerns. Efforts had been stepped up to identify and punish those causing violations of fundamental rights and freedoms and to prevent abuses by the authorities.

A new Constitution containing extensive references to human rights, including the right to physical integrity and to be protected against enforced disappearances, had been introduced, he went on. The Government had lifted the state of siege in force throughout the country since 1984 and replaced it by a graded system of emergency powers. A new Congress had been elected and a special legislative commission created to convert decree laws into permanent laws. Those laws included the defence of democracy statute, known as the anti-terrorist statute, and the defence of justice statute.

In the last two years, he said, several guerrilla organizations active in Colombia had demobilized following peace agreements with the Government.

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Certain paramilitary organizations had surrendered under a programme of leniency. Certain guerrilla groups were, however, still committing violent abuses. In the confrontation between the guerrillas and armed forces and affiliated paramilitary groups, the authorities continued to commit serious abuses with impunity.

He stated that the absence of investigations of sometimes grave crimes, the failure of the judicial system to function with real effect and the inability of the civilian Government to take appropriate action to end the situation were among the concerns expressed by the Committee. The State party was called upon to respect its conventions and treaties. Impunity as a central element in the insecurity and terror afflicting many Colombians must be terminated.

The Government must discharge from within the military and police forces those members who protected, tolerated or promoted paramilitary activity, he went on. It must make a concerted effort to dismantle the paramilitary groups. It must show a clear willingness to investigate and punish the violators of human rights so that the rule of law could be strengthened.

JANOS FODOR, expert from Hungary, said recent developments in Colombia had contributed to a favourable view of that country's third periodic report. In recent years, serious violations of human rights had taken place in a country torn by violence from guerrilla forces, government authorities and drug traffickers.

The adoption of the new Constitution and the lifting of the state of siege had created a new environment in Colombia, he said. Problems still existed, with continuing violence in certain areas of the country, but the future looked promising.

CHRISTINE CHANET, expert from France, said there was no doubt the Government was determined to end the rampant violence that had torn the country. The numbers of police officers and military personnel that had been brought to trial for human rights violations was encouraging. The work of the Constitutional Court was also reason for optimism.

The continuing large number of homocides was intolerable, she said. The impunity enjoyed by the police and military was a source of concern. She believed the civilian judiciary should have jurisdiction over police and military crimes as it did over drug traffickers.

Child labour, at age 14, was unacceptable, she said. The conditions for declaring a state of emergency should also be re-examined.

Mr. MAVROMMATIS, expert from Cyprus, said the dialogue between the Committee and the representatives of the Government had been very good indeed. Serious problems were being tackled, and much more progress should be forthcoming.

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Mr. SERRANO CALDERA, expert from Nicaragua, said the Colombian drug trafficking empire had practically become a state within a State. The situation seemed more under control, however.

It was, he continued, the Committee's duty to investigate violations of the Covenant no matter what their origin. The roots of problems, and not just the effects -- the violations of human rights -- must be considered. The audacity of Colombia's efforts would go straight to those roots and become a model for all Latin America.

NISUKE ANDO, expert from Japan, commended Colombia's effort to include the hostile guerrilla groups in the Government. However, the violence still affecting the indigenous groups and drug trafficking remained problems.

ROSALYN HIGGINS, expert from the United Kingdom, commended the delegation's positive attitude in response to the Committee's inquiry. Other members of the Committee had detailed the continuing problems in that country. The political will of the State seemed to be creating a new climate for human rights. The military, however, still needed to be brought under civilian control.

VOJIN DIMITRIJEVIC, expert from Yugoslavia, said he appreciated the complexity of the problems facing the Government in Colombia. The tremendous difficulties of confronting drug trafficking had to be recognized. International support was necessary to resolve the problem. The history of violence, which had been a part of Colombian culture for so long, was being brought under control.

The use of military force to solve internal problems had contributed to the power and impunity of the military within the society, he said. It had also given rise to the paramilitary groups still plaguing some areas. Addressing the economic roots of past violence could prevent it from reappearing in the future.

Mr. WENNERGREN, expert from Sweden, said Colombia had made considerable progress since the last report. The new Constitution signified the kind of society Colombia had become. It represented an admirable system of participatory democracy. He expressed reservations over the continuing impunity of the military and the use of military courts.

Closing Statement by Colombia

Mr. MELO (Colombia) said the main problem in his country was the impunity of the military. It was connected to the elimination of the paramilitary groups and the confrontation with drug trafficking. Legislation was also needed to cover states of emergency. The next step in constitutional integration would be to deal with the complete military penal system.

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Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-fourth Session
1140th Meeting (AM)

HR/CT/186
6 April 1992

JUVENILE JUSTICE CONCERNS DEBATED IN HUMAN RIGHTS COMMITTEE

The wording used to describe juvenile accused and offenders, and the age by which the term "juvenile" is defined, were the subject of this morning's debate by the Human Rights Committee as it examined the text of a general comment on article 10 of the International Covenant on Civil and Political Rights. Article 10 deals with the treatment of persons deprived of their liberty.

Also this morning, the Committee considered action taken by the General Assembly last year relating to human rights. Discussion focused on the Committee's working methods, on whether additional staff should be provided for the human rights treaty bodies, on the holding of joint meetings between human rights bodies and on the possible submission of special reports during states of emergency. The Committee also discussed action taken by the Commission on Human Rights during its session last month, and the Committee's coordination with the Subcommission on Prevention of Discrimination and Protection of Minorities.

The Committee Secretary informed members that contributions were being solicited to cover the cost of a database for the human rights treaty bodies, estimated at $500,000; operational costs would be borne by the United Nations regular budget.

The Committee, an 18-member body of experts serving in their individual capacity, is charged with monitoring implementation of the Covenant.

When it meets again at 3 p.m. today, the Committee will continue its consideration of the draft general comment on article 10.

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For information media—not an official record

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Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-fourth Session
1141st Meeting (PM)

HR/CT/187
6 April 1992

HUMAN RIGHTS COMMITTEE ELABORATES STATES' OBLIGATIONS REGARDING TREATMENT OF JUVENILE OFFENDERS

The Human Rights Committee this afternoon adopted the text of a general comment on article 10 of the International Covenant on Civil and Political Rights, concerning the treatment of accused juvenile persons and juvenile offenders. Article 10 deals with the treatment of all persons deprived of their liberty.

As orally amended, the general comment elaborates on a number of the obligations of States parties towards such persons, and deals with the supervision of places of detention and the training of supervisory personnel. The segregation of accused persons from convicts, and of accused juveniles and juvenile offenders from adults, is further clarified in the text.

General comments are intended to provide further clarification of provisions of the Covenant in order to assist States parties in preparing their reports.

When the Committee meets again at 10 a.m. tomorrow, 7 April, it will begin consideration of the second periodic report of Belgium on its compliance with the Covenant.

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